

Exhibit 81

Denise M. Kaszuba **HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**
New York, NY

August 18, 2005

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x
In Re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL DOCKET NO.
PRICE LITIGATION) CIVIL ACTION
-----x 01CV12257-PBS

THIS DOCUMENT RELATES TO)
ALL ACTIONS)

-----x
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

August 18, 2005

9:23 a.m.

Deposition of DENISE M. KASZUBA,
held at the offices of Hogan & Hartson,
L.L.P., 875 Third Avenue, New York, New
York, pursuant to notice, before Cary N.
Bigelow, RPR, a Notary Public of the State
of New York.

HENDERSON LEGAL SERVICES
202-220-4158

Denise M. Kaszuba HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

August 18, 2005

New York, NY

<p style="text-align: right;">42</p> <p>1 this is a computer database, correct?</p> <p>2 A. It is DB2 legacy, yes.</p> <p>3 Q. Is DB2 the name of the software?</p> <p>4 A. Yes.</p> <p>5 Q. Is that on a mainframe?</p> <p>6 A. It is on a mainframe.</p> <p>7 Q. Is the mainframe housed in Plainsboro?</p> <p>8 A. Today, no. I think it is housed with IBM.</p> <p>9 Q. In the past has it been --</p> <p>10 A. Evansville, Indiana.</p> <p>11 Q. Do you have a terminal on your desk</p> <p>12 which can access the list price master file?</p> <p>13 A. I do.</p> <p>14 Q. Do the pricing coordinators have that</p> <p>15 as well?</p> <p>16 A. They do.</p> <p>17 Q. Who are the current pricing coordinators?</p> <p>18 A. There are none at this point in time.</p> <p>19 Q. So you don't have any assistants at</p> <p>20 the moment?</p> <p>21 A. No.</p> <p>22 Q. Do you work with COPS, the customer</p>	<p style="text-align: right;">44</p> <p>1 Q. Even though they are infrequently, do</p> <p>2 you remember the topics you would discuss?</p> <p>3 A. Topics, they would like a copy of the</p> <p>4 most current price list.</p> <p>5 Q. In that instance would they call you,</p> <p>6 would they be calling you for a copy?</p> <p>7 A. Yes, they may, or they may call trade</p> <p>8 operations.</p> <p>9 Q. Have you sent list price increases to</p> <p>10 wholesalers throughout the time that you worked</p> <p>11 in pricing support?</p> <p>12 A. Yes, I have.</p> <p>13 Q. What does the phrase AWP mean to you?</p> <p>14 A. It means average wholesale price.</p> <p>15 Q. Can you define that any further?</p> <p>16 A. It's actually a price established by</p> <p>17 our, by our third party data services and that</p> <p>18 price is established by using our list price as</p> <p>19 a base.</p> <p>20 Q. Do you know how AWP is used in the</p> <p>21 industry as a pricing term?</p> <p>22 MR. EDWARDS: Used by whom?</p>
<p style="text-align: right;">43</p> <p>1 order processing system?</p> <p>2 A. I do not have access to the COPS</p> <p>3 database now.</p> <p>4 Q. Who maintains that?</p> <p>5 A. That would be customer service.</p> <p>6 Q. Do you have communications with</p> <p>7 wholesalers?</p> <p>8 A. I do communicate, yes.</p> <p>9 Q. About what topics?</p> <p>10 A. Product launches, new products,</p> <p>11 notification of products, the list price</p> <p>12 changes.</p> <p>13 Q. When you say list price changes, do</p> <p>14 you communicate list price changes to the</p> <p>15 wholesalers?</p> <p>16 A. I do.</p> <p>17 Q. Is that in the form of letters?</p> <p>18 A. In the form of a letter.</p> <p>19 Q. Do you ever have telephone</p> <p>20 conversations with any representatives of</p> <p>21 wholesalers?</p> <p>22 A. Very infrequently, but I do.</p>	<p style="text-align: right;">45</p> <p>1 MR. MATT: Used by insurance</p> <p>2 companies.</p> <p>3 A. I don't know the end result of how</p> <p>4 they use that AWP.</p> <p>5 Q. Do you know that insurers can base</p> <p>6 their reimbursement payments based on AWP?</p> <p>7 MR. EDWARDS: Objection.</p> <p>8 A. Yes, I do.</p> <p>9 Q. Are you aware that until recently</p> <p>10 Medicare based payments for Part B drugs on AWP?</p> <p>11 A. Yes.</p> <p>12 Q. Are you aware that some Medicaid</p> <p>13 programs based payments on AWP for drugs?</p> <p>14 A. No.</p> <p>15 Q. Over the years you have worked in</p> <p>16 pricing support, what are some of the uses that</p> <p>17 you have made of AWP in your area of responsibility?</p> <p>18 A. Just my area of responsibility is</p> <p>19 actually just getting them from the data</p> <p>20 services and having them available on an</p> <p>21 internal price list document, so ad hoc requests</p> <p>22 from marketing analysts who may request products</p>

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<p style="text-align: right;">46</p> <p>1 list pricing and AWP pricing information from 2 the data services. 3 Q. You referenced internal price list. 4 What is that? 5 A. The internal price list is a document 6 that we have all our products that we 7 commercially sell that contains all -- that 8 contains or did contain the wholesale direct 9 hospital pricing, it had the federal supply 10 schedule pricing, it had the Public Health 11 Service pricing, AWP pricing from all three 12 services. 13 Q. Is this called the internal price 14 list, is that the official -- 15 A. Yes. 16 Q. How long has that been maintained? 17 A. We started doing that maybe in '95. 18 Q. So '95 to the present? 19 A. That is an approximate date. It may 20 be later, I am not certain. 21 Q. And that price list is still in 22 existence at BMS?</p>	<p style="text-align: right;">48</p> <p>1 have the responsibility for maintaining that? 2 A. I did. 3 Q. Was that maintained in an Excel 4 spreadsheet format? 5 A. The internal was actually maintained 6 by -- we actually had a vendor who actually did 7 the internal -- we communicated the information, 8 but they housed that in their database and they 9 produced it for us. 10 Q. Who was the vendor? 11 A. Anro, Anro today is the vendor. 12 Q. How do you spell that? 13 A. A-n-r-o. 14 Q. In the past was it someone else? 15 A. Not for the internal price list, no. 16 Q. Do you know what format they 17 maintained it in or did maintain that in? Was 18 that Excel? 19 A. No. It's a home-grown system that 20 they had. 21 Q. How would they communicate the 22 internal price list to you?</p>
<p style="text-align: right;">47</p> <p>1 A. No, we no longer produce it as of last 2 year because of resources and the product line 3 has subsequently been reduced of BMS. 4 Q. When you say resources, what are you 5 referring to? 6 A. Staff. 7 Q. As in lack of? 8 A. Lack of. 9 Q. You are a department of one right now? 10 A. Yes. 11 Q. You said there are fewer BMS products 12 now; is that correct? 13 A. Yes. 14 Q. Can you be more specific as to how the 15 product line has contracted? 16 A. We no longer sell them commercially, 17 they are no longer part of our portfolio. 18 Q. Can you give us some examples of 19 specific drugs? 20 A. Capoten, Corgard, Pronestyl recently, 21 Serzone, Stadol NS. 22 Q. Did the internal price list, did you</p>	<p style="text-align: right;">49</p> <p>1 A. They would either do a PDF or print 2 hard copies for us. PDF was the later medium. 3 Q. You said you supplied Anro with 4 information for them to build this internal 5 price list? 6 A. Yes. 7 Q. What did BMS supply Anro with? 8 A. BMS supplied the price presentation of 9 the product, which is the records that identify 10 the product; we provided them with all of the 11 levels of pricing contained in that document. 12 Q. So you provided them with WLP? 13 A. WLP. 14 Q. And the AWP from the three publications? 15 A. Yes. 16 Q. What else? 17 A. The FSS, PHS, hospital and physician 18 pricing. 19 Q. I think I may have a couple of 20 examples of those to look at and for you to 21 identify it a little bit later. 22 What was the purpose for including</p>

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<p style="text-align: right;">50</p> <p>1 AWP on that report?</p> <p>2 A. . Actually, to provide that to the</p> <p>3 analyst, the marketing analyst.</p> <p>4 Q. Do you know why they would be</p> <p>5 interested in seeing AWP information in that</p> <p>6 report?</p> <p>7 A. I just know that they requested AWP.</p> <p>8 Q. Did they tell you why they were</p> <p>9 requesting AWP?</p> <p>10 A. They may have. Again, they needed our</p> <p>11 AWP and they also may have requested</p> <p>12 competitors' AWP. Exactly what they did do</p> <p>13 with that --</p> <p>14 Q. Based on your experience working in</p> <p>15 the pricing field for several years for BMS, do</p> <p>16 you believe they would be interested in AWP</p> <p>17 because some customers ultimately pay for BMS</p> <p>18 products based on AWP?</p> <p>19 A. I knew that AWP were in some</p> <p>20 instances a factor of what a customer may</p> <p>21 reimburse.</p> <p>22 Q. Do you believe that may be why</p>	<p style="text-align: right;">52</p> <p>1 A. Software applications, Price-Chek,</p> <p>2 Price Probe.</p> <p>3 Q. Those were accessed by you?</p> <p>4 A. Correct.</p> <p>5 Q. Tell me about Price-Chek.</p> <p>6 A. Price-Chek is owned by MediSpan,</p> <p>7 Price-Chek is a PC software package.</p> <p>8 Q. Did BMS license that from MediSpan?</p> <p>9 A. Yes, they did.</p> <p>10 Q. Did you have that available to you on</p> <p>11 your computer at your desk?</p> <p>12 A. Yes, I did.</p> <p>13 Q. What information does Price-Chek show?</p> <p>14 A. Price-Chek actually contains all</p> <p>15 active pharmaceutical products, it contains the</p> <p>16 historical pricing, current pricing of list,</p> <p>17 wholesale price, direct price and AWP.</p> <p>18 Q. And you said historical. How far back?</p> <p>19 A. As long as the product -- it's</p> <p>20 relative to the -- it could be eight buckets,</p> <p>21 eight price changes.</p> <p>22 Q. Eight different columns in the report?</p>
<p style="text-align: right;">51</p> <p>1 marketing was interested in having the AWP on</p> <p>2 the internal price list?</p> <p>3 A. Yes.</p> <p>4 Q. You also mentioned ad hoc requests</p> <p>5 from marketing personnel.</p> <p>6 A. Yes.</p> <p>7 Q. Can you be more specific what that means?</p> <p>8 A. Ad hoc requests, they would actually</p> <p>9 provide me a list of products that they would</p> <p>10 like to see product and pricing information.</p> <p>11 Q. Ad hoc meaning this was not a</p> <p>12 periodically established schedule?</p> <p>13 A. No, no.</p> <p>14 Q. And the pricing information they would</p> <p>15 request in an ad hoc manner would include</p> <p>16 wholesale list price and AWP?</p> <p>17 A. Sometimes.</p> <p>18 Q. And sometimes would they request the</p> <p>19 same information about competitors?</p> <p>20 A. Yes.</p> <p>21 Q. What would be your source of</p> <p>22 information on competitive drugs?</p>	<p style="text-align: right;">53</p> <p>1 A. Yes.</p> <p>2 Q. So it can --</p> <p>3 A. I mean, eight different buckets per</p> <p>4 price type.</p> <p>5 Q. So let's take AWP as a price type.</p> <p>6 It would be able to show the eight</p> <p>7 different prior periods?</p> <p>8 A. Correct.</p> <p>9 Q. What is Price Probe?</p> <p>10 A. Price Probe is actually a PC software</p> <p>11 package licensed from First Data Bank.</p> <p>12 Q. Is that on your desktop?</p> <p>13 A. Yes.</p> <p>14 Q. Does that contain all active</p> <p>15 pharmaceutical products?</p> <p>16 A. Yes.</p> <p>17 Q. It contains wholesale list prices,</p> <p>18 direct prices --</p> <p>19 A. Direct prices and AWP.</p> <p>20 Q. For what time frame?</p> <p>21 A. At one point they could only provide</p> <p>22 three buckets, so three price changes. I</p>

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<p style="text-align: right;">54</p> <p>1 believe they are increasing it as the database ages.</p> <p>2 Q. Besides the fact that Price-Chek has a</p> <p>3 longer historical profile, would there be one</p> <p>4 reason why you would access Price-Chek --</p> <p>5 MR. MATT: Strike that.</p> <p>6 Q. When do you actually use Price-Chek</p> <p>7 and Price Probe, under what circumstances, why</p> <p>8 do you use them?</p> <p>9 A. My major functionality with them is to</p> <p>10 actually look at the product and prices that we</p> <p>11 provide MediSpan to ensure that the product</p> <p>12 information is correct and the list price is</p> <p>13 correct.</p> <p>14 Q. So as an auditing type function?</p> <p>15 A. Yes.</p> <p>16 Q. Do you access them from time to time</p> <p>17 in response to ad hoc pricing requests?</p> <p>18 A. I do.</p> <p>19 Q. When you receive an ad hoc request</p> <p>20 from marketing and you want to access one of</p> <p>21 these databases, do you have preference of one</p> <p>22 over the other?</p>	<p style="text-align: right;">56</p> <p>1 earlier from marketing, who would make those</p> <p>2 requests?</p> <p>3 A. It would -- it could vary. The</p> <p>4 marketing research analyst that supported the</p> <p>5 marketing group and at times the product manager</p> <p>6 may request or a manager supporting a product</p> <p>7 may request information.</p> <p>8 Q. Is it your understanding that a</p> <p>9 product manager manages a single drug product?</p> <p>10 A. Or two, yes.</p> <p>11 Q. And works with pricing.</p> <p>12 Does the product manager have input</p> <p>13 regarding the price charged on the drug products</p> <p>14 for which he or she is a manager?</p> <p>15 A. The list price?</p> <p>16 Q. Yes.</p> <p>17 A. If -- again, when we implemented price</p> <p>18 increases, it was not via the product manager.</p> <p>19 Q. Did they have input at some --</p> <p>20 A. They may have input behind the scenes,</p> <p>21 but when we went in, when we increased the</p> <p>22 price, they did not even know we were -- there</p>
<p style="text-align: right;">55</p> <p>1 A. I do have a preference over Price-Chek.</p> <p>2 Q. A preference for Price-Chek?</p> <p>3 A. Correct.</p> <p>4 Q. Why is that?</p> <p>5 A. Because the history is all in one row</p> <p>6 and with Price Probe, actually, the history is</p> <p>7 in multiple rows.</p> <p>8 Q. How long has BMS licensed Price-Chek?</p> <p>9 A. I don't recall.</p> <p>10 Q. Was that available to you in 1992?</p> <p>11 A. No.</p> <p>12 Q. How about 1995?</p> <p>13 A. It may have been.</p> <p>14 Q. Do you recall at some time in the</p> <p>15 mid-nineties it became available?</p> <p>16 A. Yes, I do.</p> <p>17 Q. The same question for Price Probe. Do</p> <p>18 you know approximately when that became</p> <p>19 available, approximately when BMS began</p> <p>20 licensing it?</p> <p>21 A. In the mid-nineties also.</p> <p>22 Q. The ad hoc request we discussed</p>	<p style="text-align: right;">57</p> <p>1 was a secrecy because we did not want our</p> <p>2 customers to know the price increase was</p> <p>3 occurring until the day of our major customers,</p> <p>4 wholesalers.</p> <p>5 Q. So product manager wasn't under the</p> <p>6 chain of authority that signed off?</p> <p>7 A. No, they did not.</p> <p>8 Q. The research analysts you referenced,</p> <p>9 what is your understanding of their function?</p> <p>10 A. Their function is actually to support</p> <p>11 pricing issues.</p> <p>12 Q. Within the marketing department?</p> <p>13 A. Within the marketing department.</p> <p>14 Q. Just so I understand, the Price-Chek</p> <p>15 and Price Probe products, they contain price</p> <p>16 information for all drugs, not just BMS drugs?</p> <p>17 A. Correct.</p> <p>18 Q. Is it your understanding that</p> <p>19 wholesalers purchase drugs from BMS at wholesale</p> <p>20 list price?</p> <p>21 A. Yes.</p> <p>22 Q. Is it your understanding that</p>

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<p style="text-align: right;">58</p> <p>1 wholesalers frequently obtain a discount for</p> <p>2 paying promptly, a discount from BMS for paying</p> <p>3 promptly?</p> <p>4 A. Correct.</p> <p>5 Q. Can that be one to two percent?</p> <p>6 A. Yes.</p> <p>7 Q. Is it your experience that they</p> <p>8 usually take advantage of that?</p> <p>9 A. I don't know.</p> <p>10 Q. You know that it is offered, that</p> <p>11 discount?</p> <p>12 A. I know that it is offered, correct.</p> <p>13 Q. Are you aware that BMS contracts with</p> <p>14 GPOs and institutions?</p> <p>15 A. Yes, I am.</p> <p>16 Q. Are you aware that those contracts</p> <p>17 typically contain prices that are lower than</p> <p>18 wholesale list price?</p> <p>19 A. Correct, I am.</p> <p>20 Q. Are you familiar with the charge-back</p> <p>21 system?</p> <p>22 A. I am familiar with it.</p>	<p style="text-align: right;">60</p> <p>1 rebates to some purchasers of BMS drugs?</p> <p>2 A. Excuse me?</p> <p>3 Q. Are you also aware that BMS pays</p> <p>4 rebates to some purchasers of BMS drugs?</p> <p>5 A. Yes, I am aware.</p> <p>6 Q. What is your knowledge regarding rebates?</p> <p>7 A. Just that I know they do exist.</p> <p>8 Q. Do you know what types of customers</p> <p>9 receive rebates?</p> <p>10 A. At a high level, GPOs.</p> <p>11 Q. PBMs?</p> <p>12 A. PBMs.</p> <p>13 Q. Do you have any individual</p> <p>14 responsibility for processing rebates?</p> <p>15 A. No, I do not.</p> <p>16 Q. Are you aware of any transaction in</p> <p>17 which the end purchaser of a BMS drug ever paid</p> <p>18 more than AWP for that drug?</p> <p>19 A. No.</p> <p>20 Q. Is it because you are just not aware</p> <p>21 or because you don't believe that anyone would</p> <p>22 have paid more than AWP for a BMS drug?</p>
<p style="text-align: right;">59</p> <p>1 Q. Can you describe your familiarity, please?</p> <p>2 A. The charge-back system actually is an</p> <p>3 EDI functionality of BMS in which we have</p> <p>4 relationships with wholesalers who sell to our</p> <p>5 customers we contract with and again,</p> <p>6 wholesalers pay the list and for those customers</p> <p>7 who have contracts and purchase through the</p> <p>8 wholesalers, they actually pay the contract</p> <p>9 price and to make a wholesaler whole, they</p> <p>10 submit those claims via EDI and we, in turn,</p> <p>11 credit the wholesaler.</p> <p>12 Q. Are you involved in that process at all?</p> <p>13 A. No.</p> <p>14 Q. In other words, you don't process</p> <p>15 charge-backs, that is not your area?</p> <p>16 A. I do not process them.</p> <p>17 Q. But you are familiar with them —</p> <p>18 A. Correct.</p> <p>19 Q. — based on your years of experience</p> <p>20 in pricing support?</p> <p>21 A. Correct.</p> <p>22 Q. Are you also aware that BMS pays</p>	<p style="text-align: right;">61</p> <p>1 A. I am not aware.</p> <p>2 Q. Do you believe that anyone has ever</p> <p>3 paid AWP for a BMS drug?</p> <p>4 A. I am not aware.</p> <p>5 Q. Do you have a belief one way or the other?</p> <p>6 A. No.</p> <p>7 Q. Why is that?</p> <p>8 A. I don't know the end results.</p> <p>9 MR. MATT: This will be Exhibit Kaszuba 003,</p> <p>10 please.</p> <p>11 (Exhibit Kaszuba 003, documents bearing</p> <p>12 production Nos. BMSAWP/0000597 through</p> <p>13 BMSAWP/0000617, marked for identification,</p> <p>14 as of this date.)</p> <p>15 Q. The court reporter has marked as</p> <p>16 Exhibit Kaszuba 003 to your deposition a series of</p> <p>17 documents produced from your files containing</p> <p>18 the Bates numbers 0000597 to 617.</p> <p>19 I would like to draw your attention to</p> <p>20 the page which has the number in the lower</p> <p>21 right-hand corner of 612.</p> <p>22 MR. EDWARDS: You are making a</p>

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<p style="text-align: right;">62</p> <p>1 representation this was produced from 2 Ms. Kaszuba's files? 3 MR. MATT: Correct. 4 MR. EDWARDS: Did we tell you that at 5 some point? 6 MR. MATT: Yes. The document 7 custodian list. These pages were combined 8 in this manner and in this order. 9 Q. Can you identify what you see on the 10 page which has the Bates numbers ending in 612? 11 A. Yes. This is a memo from Tim Crew to 12 me with appropriate signatures and that is 13 addressing Atenolol. 14 Q. Can you read into the record the 15 paragraph titled "Background." 16 A. Okay. 17 "In order to accomplish a speedy 18 market introduction of Atenolol 50-milligram 19 1,000s, a wholesale list price needs to be 20 created, the price is set to establish an AWP 21 that is competitive with other generic 22 offerings. Please note that this wholesale</p>	<p style="text-align: right;">64</p> <p>1 numbers in the lower right-hand corner of 597 to 2 606, can you tell me what these letters are 3 doing? 4 A. These letters are actually providing 5 information to the various data services of the 6 introduction of a new product and it is 7 providing the list price, wholesale price, 8 direct price and the approximate first ship date 9 of the product. 10 Q. These are letters you prepared? 11 A. Yes. 12 Q. Did you provide them to the 13 organizations that appear in the addressee lines? 14 A. Yes. 15 Q. Was this done under your area of 16 responsibility as a senior pricing analyst? 17 A. Correct. 18 Q. Do you know why BMS in this particular 19 instance communicated a wholesale list price of 20 \$500 when the memo that you reviewed at page 612 21 states that it won't reflect actual selling 22 price?</p>
<p style="text-align: right;">63</p> <p>1 price will not reflect actual selling price 2 since Apothecon sells Atenolol primarily at 3 contractor special offer pricing." 4 Q. Would you turn to the next page. 5 That reflects the new list price, 6 correct, \$500? 7 A. Correct. 8 Q. And it also says Apothecon anticipated AWP. 9 A. Yes. 10 Q. How do you believe that was calculated? 11 A. Actually, it was calculated by the 12 product manager by using a factor of between 20 13 to 25 percent. 14 Q. Is that the typical market factor 15 applied by one of the publications? 16 A. That range, they may. 17 Q. In this case it is 20 -- is it 20 or 18 25 percent in this instance? 19 A. I don't know. 20 Q. 25 percent, it looks like. 21 Then if you can look at the letters 22 which have your name on them from the Bates</p>	<p style="text-align: right;">65</p> <p>1 A. Because actually what we communicated 2 to the data services from the inception of my 3 responsibility was to communicate the wholesale 4 list price. 5 Q. You don't know why, then, BMS was 6 communicating a wholesale list price when it 7 would not reflect the actual selling price of 8 this particular drug at this particular time? 9 MR. EDWARDS: Objection. 10 A. Other than what was communicated in 11 this memo from Tim Wert. 12 Q. I believe you testified earlier AWP is 13 calculated from wholesale list price; is that 14 correct? 15 A. Correct. 16 Q. In this instance, do you recognize 17 that no one would have paid AWP for this 18 particular drug at this particular time because 19 they wouldn't have even paid the list price for 20 this drug, correct? 21 A. Correct. 22 (Exhibit Kaszuba 004, documents bearing</p>

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<p style="text-align: right;">70</p> <p>1 provide you with AWP's based on the data you have 2 provided them, correct? 3 A. That is correct. 4 (Exhibit Kaszuba 005, documents bearing 5 production Nos. BMSA WP/0000574 through 6 BMSA WP/0000587, marked for identification, 7 as of this date.) 8 Q. The court reporter has marked as 9 Exhibit Kaszuba 005 to your deposition a series of 10 documents I believe were produced from your 11 files and contain the Bates numbers 0000574 12 through 587. 13 I will draw your attention to the 14 specific page bearing Bates number 583 in the 15 lower right-hand corner. 16 On this page is that your name written 17 in cursive in the upper right-hand corner, does 18 that say Denise? 19 A. You know, it may. I can't make it out. 20 Q. And the first question on this 21 document is do you believe you received this 22 document on or about the time that it was</p>	<p style="text-align: right;">72</p> <p>1 and wholesale list price. 2 A. I would. 3 Q. I don't have any more questions on 4 that document. 5 (Exhibit Kaszuba 006, documents bearing 6 production Nos. BMSA WP/0000095 through 7 BMSA WP/0000120, marked for identification, 8 as of this date.) 9 Q. The court reporter has marked as 10 Exhibit Kaszuba 006 to your deposition another set of 11 documents I believe were produced from your 12 files and they bear Bates numbers 0000095 to 120. 13 I would like to draw your attention to 14 the memorandum found on page 105. 15 Do you believe this is a memorandum 16 that you would have received in the course of 17 your responsibilities at BMS? 18 A. I do believe. 19 Q. Could you read out loud the paragraph 20 entitled "Background," please. 21 A. "To accomplish rapid introduction of 22 Trimox capsules 500-milligram 3,000s into the</p>
<p style="text-align: right;">71</p> <p>1 created in August of 1996? 2 A. I believe I did. 3 Q. Can you read the paragraph that says 4 "Background" out loud? 5 A. "To accomplish a rapid market 6 introduction of albuterol, wholesale list prices 7 must be established. Those wholesale prices do 8 not reflect the actual selling prices as 9 albuterol will be sold primarily in contractor 10 special offer pricing. Apoteco's wholesale 11 special offer pricing for albuterol matches 12 Warrick and Zenith, the two albuterol market 13 leaders." 14 Q. Is this memorandum communicating the 15 price changes that are found in the following 16 page bearing the Bates number 584? 17 A. They are communicating prices, so I 18 can assume they are the price changes. 19 Q. Would you have communicated these 20 price changes to publishers? 21 MR. EDWARDS: Which ones? 22 MR. MATT: The ones direct list price</p>	<p style="text-align: right;">73</p> <p>1 market wholesale list prices must be 2 established. It is prudent to point out at this 3 that these wholesale prices do not reflect 4 actual selling prices as Trimox capsules 5 500-milligram 3,000s will be sold primarily at 6 contract or special offer pricing. The proposed 7 pricing is prorated directly from the 500-count 8 bottle prices." 9 Q. Is this memorandum referring to the 10 next page which bears Bates number 106? 11 A. Yes. 12 Q. So \$961.58 was the new direct list price? 13 A. Correct. 14 Q. \$913.50 was the new wholesale list price? 15 A. Correct. 16 Q. And the anticipated AWP was \$1,141.86, 17 correct? 18 A. As listed on this document, yes. 19 Q. Would you have communicated a direct 20 list price and wholesale list prices to the 21 publishers? 22 A. Yes, I would.</p>

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<p style="text-align: right;">74</p> <p>1 Q. On the first page of this document, 2 the Bates number ending in 95, is that your 3 signature? 4 A. Yes, it is. 5 Q. And Beth Radar is an employee of First 6 Data Bank at this time? 7 A. Yes. 8 Q. This time being 1992? 9 A. Yes. 10 Q. Did you prepare this letter? 11 A. Yes, I did. 12 Q. And the next page, the Bates numbers 13 ending in 96, could you identify this for us? 14 A. This is a document containing Trimox, 15 which contains wholesale direct First Data 16 Bank's AWP, MediSpan's AWP and Red Book's AWP. 17 Q. Is this a Price-Chek report? 18 A. No, this is not. 19 Q. Would it be a price alert - I am 20 sorry, a Price Pro report? 21 A. No, it is not. 22 Q. The file name says AWP 93.</p>	<p style="text-align: right;">76</p> <p>1 Q. Do you see in the text he says, 2 "Wal-Mart is starting to buy the unit of use and 3 we need AWP's established for their third-party 4 reimbursement to work properly." 5 Do you see that sentence? That is the 6 last sentence of the e-mail, right before it 7 says "Please advise." 8 A. Yes, I do see that. 9 Q. How is an AWP established in this 10 instance for this particular drug? Was this a 11 new line of drug? 12 I am sorry, I just referenced the 13 first sentence, which says it was a price 14 increase. 15 I will ask you a broader question. 16 What would you have done in response 17 to this e-mail? 18 A. In response to this e-mail I would 19 have done nothing only because, again, when we 20 implement price increases, I cannot respond to a 21 product manager's request. 22 Q. You need to have multiple manager</p>
<p style="text-align: right;">75</p> <p>1 Is this something that you prepared? 2 A. I may have. 3 Q. If you did, where would you have 4 obtained that information? 5 A. The wholesale and direct price would 6 have been obtained from the price master file, 7 price authorization system, and then the various 8 AWP's would have been obtained from the various 9 data services. 10 Q. The next page marked Bates number 97, 11 is this an e-mail that you received from Joseph 12 Grotzinger? 13 A. It is an e-mail I received from him, yes. 14 Q. If you know, what was his title at 15 that time? 16 A. Pardon me? 17 Q. Do you know what his title was at that 18 time? 19 A. He was product manager - I don't know 20 exactly. 21 Q. Would he have been in marketing? 22 A. He would have been in marketing.</p>	<p style="text-align: right;">77</p> <p>1 sign-off? 2 A. Correct. 3 Q. He is not on the official list, correct? 4 A. Correct. 5 Q. SMZ/TMP suspension, is that Trimox? 6 A. Excuse me? 7 Q. Is that another way of referring to Trimox? 8 A. SMZ? 9 Q. Yes. 10 A. No. 11 Q. Can you look at the page that follows, 12 the Bates numbers ending with 98. 13 A. Yes. 14 Q. Can you read that paragraph out loud 15 that starts with "Background." 16 A. "Background: We were successful in 17 using our unit of use packaging to secure the 18 Trimox capsule business at Wal-Mart. It is 19 necessary to furnish wholesale pricing to the 20 pricing publishers to enable them to establish 21 AWP's for third-party reimbursement purposes. It 22 is prudent to point out at this time that these</p>

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<p style="text-align: right;">78</p> <p>1 wholesale prices do not reflect actual selling 2 prices as Trimox unit of use would be sold 3 primarily at contractor special offer pricing." 4 Q. It looks like the next page is another 5 copy of the same memo, correct? 6 A. Yes. 7 Q. Then the next page with the Bates 8 numbers ending in 100, that says "SMZ/TMP oral 9 suspension." 10 My question is, does that relate to 11 discussion of Trimox? 12 A. No, it does not. 13 Q. Thanks for clarifying that point. 14 Would you look at the two pages ending 15 in Bates numbers 101 and 102, please. 16 A. Yes. 17 Q. On 102, would you please read out loud 18 the paragraph entitled "Background." 19 A. "SMZ/TMP oral suspension is currently 20 manufactured by ALPharma and Teva, implementing 21 price increases in the range of 67 to 83 percent 22 for this product. Commodity pricing is</p>	<p style="text-align: right;">80</p> <p>1 interrogatory, which means a question, to BMS as 2 a corporation and BMS, through its lawyers, 3 responded. 4 I would like to have that marked as an 5 exhibit and I will ask you some questions about 6 that. 7 (Exhibit Kaszuba 007, two-page excerpt 8 from interrogatories containing 9 interrogatory number 5 and answer, marked 10 for identification, as of this date.) 11 Q. This is actually an excerpt from a 12 larger set of interrogatories and the court 13 reporter has marked that indicated by the E 14 stamp as E served on January 19, 2004. 15 Interrogatory number 5 asks, "With 16 respect to each AWPID, please describe how you 17 calculate the prices and/or data reported to 18 Medical Economics, Red Book, First Data Bank or 19 MediSpan or any other such entity that gathers 20 and publishes either average wholesale prices or 21 wholesale acquisition costs." 22 Underneath that is the answer in which</p>
<p style="text-align: right;">79</p> <p>1 increasing proportionately. While these 2 wholesale list prices do not reflect actual 3 selling prices, we need to increase our ASP 4 pricing across all areas -- wholesale list, 5 direct list, wholesale special offer, bid 6 pricing -- to maintain profit parity." 7 Q. Do you believe that the page we just 8 looked at with the Bates number ending in 100 9 pertains to the documents found on pages 101 and 10 102? 11 A. It may. 12 Q. Looking at page 102, would you have 13 implemented this price increase on the SMZ/TMP 14 oral suspension? 15 A. Not based on this documentation, 16 because there are no signatures, so I would not 17 have. 18 Q. Thank you. Those are all of the 19 questions that I have on that one. 20 Let's talk about the process of 21 communicating prices to others. 22 The plaintiffs in this case served an</p>	<p style="text-align: right;">81</p> <p>1 BMS interposes an objection and then subject to 2 that objection provides an answer beginning with 3 "Generally speaking." 4 I would like you to read out loud the 5 entire paragraph that begins "Generally speaking," 6 please. 7 A. "Generally speaking, there is a 8 multistep information flow between BMS and the 9 above publications. In step 1, someone from the 10 finance department within BMS sends to the 11 pricing administration department either a price 12 or new drug or a price increase on an existing 13 drug, the latter usually expressed as a 14 percentage figure, five percent increase from 15 the earlier price. 16 "In step 2, pricing administration 17 inputs the information into the BMS internal 18 computer system and in step 3 customers are 19 notified of the new prices. This is done via 20 Western Union, mailgram and fax or e-mail. 21 "In step 4, the publications are 22 notified. Prior to August 2001, pricing</p>

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<p style="text-align: right;">98</p> <p>1 any time other than August 10, 1992?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you familiar with the markup</p> <p>4 factors First Data Bank uses for BMS products?</p> <p>5 A. Yes, I am.</p> <p>6 Q. What are they today?</p> <p>7 A. First Data Bank's, I think they are 25</p> <p>8 percent.</p> <p>9 Q. That is 25 percent for all BMS labeled</p> <p>10 products; is that correct?</p> <p>11 A. I'm assuming.</p> <p>12 Q. At some point, as we've seen earlier,</p> <p>13 at least for some labeler codes, it was 20</p> <p>14 percent, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know when they were all changed</p> <p>17 to 25 percent?</p> <p>18 A. In 2000 at some point. Not the year</p> <p>19 2000, but 2001-2002. I am not quite certain.</p> <p>20 Q. When that change occurred, did you</p> <p>21 notice that it had occurred?</p> <p>22 A. It was brought to my attention that it</p>	<p style="text-align: right;">100</p> <p>1 Q. Did she tell you why the policy that</p> <p>2 she referenced had changed?</p> <p>3 A. Actually, she sent me a document, and</p> <p>4 I don't recall the content of it, a letter that</p> <p>5 she sent out to customers, I think. I think she</p> <p>6 sent that to our customers following -</p> <p>7 Q. With an explanation?</p> <p>8 A. With an explanation, and I don't</p> <p>9 recall the details of the letter.</p> <p>10 Q. Let's talk about Red Book.</p> <p>11 What is presently the markup Red Book</p> <p>12 applies to the wholesale list prices of BMS drugs?</p> <p>13 A. I don't know today.</p> <p>14 Q. Historically, do you know?</p> <p>15 A. It ranged from 20 to 25 percent.</p> <p>16 Q. At points in time in history, were you</p> <p>17 generally aware of what that markup was?</p> <p>18 A. Yes.</p> <p>19 Q. Same question for First Data Bank, you</p> <p>20 were generally aware at the time -</p> <p>21 A. Yes.</p> <p>22 Q. And MediSpan?</p>
<p style="text-align: right;">99</p> <p>1 had occurred.</p> <p>2 Q. How was that brought to your attention?</p> <p>3 A. It was brought to my attention by a</p> <p>4 trade operations manager who was notified by a</p> <p>5 customer who was upset.</p> <p>6 Q. Who was the trade operations manager</p> <p>7 that you spoke with?</p> <p>8 A. Wayne Roberts.</p> <p>9 Q. So when you heard about this, what did</p> <p>10 you do?</p> <p>11 A. I contacted First Data Bank.</p> <p>12 Q. Who did you contact specifically?</p> <p>13 A. Kay Morgan.</p> <p>14 Q. What did she say?</p> <p>15 A. Kay Morgan just said their pricing</p> <p>16 policy had changed and they were changing the</p> <p>17 factor to 25 percent.</p> <p>18 Q. Did she have any other explanation?</p> <p>19 A. Not that I - she did mention that she</p> <p>20 was - she gave an explanation in the sense that</p> <p>21 it affected a lot of pharmaceutical products,</p> <p>22 pharmaceutical companies.</p>	<p style="text-align: right;">101</p> <p>1 A. Yes.</p> <p>2 Q. The same question, you were generally</p> <p>3 aware of the markups at the time?</p> <p>4 A. Yes.</p> <p>5 Q. What were they at MediSpan?</p> <p>6 A. They also ranged between 20 and 25</p> <p>7 percent.</p> <p>8 Q. At any time did you or anyone under</p> <p>9 your supervision conduct any sort of a study</p> <p>10 into what the wholesalers were charging for BMS</p> <p>11 products?</p> <p>12 A. No.</p> <p>13 Q. Did it ever occur to you that BMS</p> <p>14 should do that?</p> <p>15 A. No.</p> <p>16 MR. EDWARDS: We have been going for</p> <p>17 quite a while now, two hours, I think, at</p> <p>18 least.</p> <p>19 Could we take a break?</p> <p>20 MR. MATT: Let's go off the record, we</p> <p>21 will take a break.</p> <p>22 (Recess taken.)</p>

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<p style="text-align: right;">102</p> <p>1 BY MR. MATT:</p> <p>2 Q. Ms. Kaszuba, before our break, we were</p> <p>3 discussing Exhibit Kaszuba 008. I would like you to take</p> <p>4 a look at that again.</p> <p>5 Looking at the page with the Bates</p> <p>6 number ending 246, it says at the bottom there,</p> <p>7 the last paragraph of this office dispatch says,</p> <p>8 "I will pick up this to do another survey in 90</p> <p>9 days just in case the wholesalers/competition</p> <p>10 have been slow to make changes to their pricing."</p> <p>11 Do you know whether within three to</p> <p>12 six months of your letter which you sent on</p> <p>13 August 10th that the markups on BMS oncology</p> <p>14 drugs were changed to 25 percent?</p> <p>15 A. Could you just restate that question?</p> <p>16 I am sorry.</p> <p>17 Q. Sure.</p> <p>18 I think you testified that you didn't</p> <p>19 believe that they made any changes based</p> <p>20 on this, correct?</p> <p>21 A. MediSpan, correct.</p> <p>22 Q. And then together we explored whether</p>	<p style="text-align: right;">104</p> <p>1 A. No, not that I know of.</p> <p>2 Q. Let's talk about First Data Bank.</p> <p>3 Did First Data Bank make the change</p> <p>4 from 20.5 percent to 25 percent that you</p> <p>5 requested?</p> <p>6 A. No, they did not.</p> <p>7 Q. The same follow-up question, do you</p> <p>8 know whether in a subsequent time period of</p> <p>9 about three to six months later, did they make</p> <p>10 the change to 25 percent?</p> <p>11 A. No, they did not.</p> <p>12 Q. Have you ever communicated any markup</p> <p>13 factor changes to wholesalers?</p> <p>14 A. No.</p> <p>15 Q. At any point in time you don't recall</p> <p>16 ever doing that?</p> <p>17 A. No, I do not recall.</p> <p>18 Q. Let's talk about for a moment the</p> <p>19 information sent back to BMS by the publications</p> <p>20 after you provide the wholesale list prices.</p> <p>21 I think you testified earlier that</p> <p>22 they sent back AWP's.</p>
<p style="text-align: right;">103</p> <p>1 the labeler 0003 had a 1.25 markup, and it did,</p> <p>2 according to the office dispatch letter.</p> <p>3 What I am getting at is this: Did any</p> <p>4 changes occur subsequent to September 19th?</p> <p>5 A. Did any changes occur in MediSpan's</p> <p>6 database subsequent to this?</p> <p>7 Q. Just on the BMS oncology drugs.</p> <p>8 A. No.</p> <p>9 Again, there are only two products</p> <p>10 within the labeler code 0003 and they were</p> <p>11 Squibb's and they may have already had a factor</p> <p>12 of 25 percent.</p> <p>13 Q. You don't know for certain if they had</p> <p>14 a factor of 25 percent at the time?</p> <p>15 A. I don't know for sure.</p> <p>16 Q. It's your understanding that for other</p> <p>17 BMS oncology drugs, MediSpan did not make the</p> <p>18 change to 25 percent?</p> <p>19 A. It is my understanding that they did not.</p> <p>20 Q. What I am trying to find out is, at</p> <p>21 some point thereafter, in the following three to</p> <p>22 six months, was a change made?</p>	<p style="text-align: right;">105</p> <p>1 A. Correct.</p> <p>2 Q. Does your department review those AWP's</p> <p>3 for reasonability?</p> <p>4 A. On sporadic we may review them.</p> <p>5 Q. And when you review them, what are you</p> <p>6 looking for?</p> <p>7 A. The information that they provide back</p> <p>8 to us?</p> <p>9 Q. Correct.</p> <p>10 A. We are looking to ensure that the</p> <p>11 product information is the correct presentation.</p> <p>12 We are looking to ensure that the WLP or DP is</p> <p>13 correct. Then we are actually extracting and</p> <p>14 taking the AWP historically to put on our</p> <p>15 internal price list.</p> <p>16 Q. And do you review the AWP itself for</p> <p>17 reasonability as well?</p> <p>18 A. On a sporadic basis, we had.</p> <p>19 Q. And when you say you would</p> <p>20 sporadically review it, what do you mean by that?</p> <p>21 A. Again, based on the AWP's from a prior</p> <p>22 publication, internal price list, we may compare</p>

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<p style="text-align: right;">106</p> <p>1 the AWP.</p> <p>2 Q. Okay.</p> <p>3 Do you also review the new AWP to</p> <p>4 determine what markup factor was applied to the WLP?</p> <p>5 A. I had done. It was not a consistent</p> <p>6 practice, but --</p> <p>7 (Exhibit Kaszuba 009, documents bearing</p> <p>8 production Nos. BMS/AWP/000186646 through</p> <p>9 BMS/AWP/000186649, marked for</p> <p>10 identification, as of this date.)</p> <p>11 Q. The court reporter has marked as</p> <p>12 Exhibit Kaszuba 009 to your deposition a document entitled</p> <p>13 "Price Increase/Decrease Notification Process,"</p> <p>14 and it contains the Bates numbers 000186646 to 49.</p> <p>15 Do you recognize this document?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Take a moment to review that and let</p> <p>18 me know when you are ready for some more questions.</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. I do.</p> <p>22 Q. Is this something that you prepared?</p>	<p style="text-align: right;">108</p> <p>1 described the price increase/decrease</p> <p>2 notification process at that time?</p> <p>3 A. It is pretty consistent in what we do.</p> <p>4 Q. Is there anything that jumps out at</p> <p>5 you as being incorrect on this document?</p> <p>6 A. Nothing that jumps out.</p> <p>7 Q. I would like to draw your attention at</p> <p>8 the last page, paragraph 18.</p> <p>9 Can you read that out loud for us,</p> <p>10 please?</p> <p>11 A. "Obtaining AWP's from the data services</p> <p>12 First Data Bank and Red Book approximate</p> <p>13 turnaround time is two to three days. Review</p> <p>14 AWP's for reasonability, i.e. 20 to 25 percent</p> <p>15 higher than the new wholesale price. AWP's are</p> <p>16 for internal use only."</p> <p>17 Q. That is consistent with the testimony</p> <p>18 you gave just before we introduced this exhibit,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And number 19 says update internal</p> <p>22 price lists with new AWP's?</p>
<p style="text-align: right;">107</p> <p>1 A. No, it is not.</p> <p>2 Q. Do you know who prepared that?</p> <p>3 A. I believe it was Mimi Leake, who was a</p> <p>4 pricing analyst.</p> <p>5 Q. At the time she prepared it, it was</p> <p>6 under your supervision, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Can you give us an approximate time at</p> <p>9 which this was created?</p> <p>10 A. I don't know exactly when, but it had</p> <p>11 to be in the time period, you know, she</p> <p>12 supported this activity, so it's like late 2001</p> <p>13 to 2003.</p> <p>14 Q. Can we narrow that further by</p> <p>15 concluding, based on the information in</p> <p>16 paragraph 5, that it was created back when BMS</p> <p>17 reported two separate prices, the wholesale</p> <p>18 price list and direct price?</p> <p>19 A. It was definitely when we had two-tier</p> <p>20 pricing, correct.</p> <p>21 Q. Do you believe, based on your review</p> <p>22 of the document, that this document accurately</p>	<p style="text-align: right;">109</p> <p>1 A. Correct.</p> <p>2 Q. Is that a reference to the internal</p> <p>3 price list we talked about earlier?</p> <p>4 A. Yes.</p> <p>5 Q. On the prior page, with the Bates</p> <p>6 numbers ending in 648, there is a paragraph that</p> <p>7 says sales force communications.</p> <p>8 A. Correct.</p> <p>9 Q. And little letter C references NID</p> <p>10 sales forces.</p> <p>11 What does NID refer to?</p> <p>12 A. Neuro infectious and dermatology, it</p> <p>13 is a group within primary care.</p> <p>14 Q. Did your department ever send AWP's to</p> <p>15 BMS oncology sales representatives?</p> <p>16 A. We did.</p> <p>17 Q. You did?</p> <p>18 A. Yes.</p> <p>19 Q. What form would they be in?</p> <p>20 A. It was a price list, a pocket reference.</p> <p>21 Q. What information -- pocket reference,</p> <p>22 was that the name you called it, you used?</p>

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<p style="text-align: right;">110</p> <p>1 A. Yes, Bristol-Myers Squibb pocket 2 reference. 3 Q. What information was contained in the 4 pocket reference? 5 A. The information found on it was the 6 product and pricing information, the wholesale 7 price, direct price, and I am not certain if we 8 had two columns for wholesale and direct. We 9 also had the AWP's from all three data services. 10 Q. During what time period -- first of 11 all, back up. 12 The BMS pocket reference was sent by 13 your department? 14 A. It was, yes. 15 Q. It was put together by your department 16 as well? 17 A. Yes. 18 Q. What time period was this done? 19 A. It was in the nineties. 20 Q. Was there a point in time in which you 21 stopped, your department stopped sending the BMS 22 pocket reference to the oncology sales persons?</p>	<p style="text-align: right;">112</p> <p>1 we used it and we never replenished it because 2 we never went back to reprint it. 3 Q. Was this something that was produced 4 on a periodic basis such as quarterly or 5 annually? 6 What determined when a BMS pocket 7 reference was sent? 8 A. Initially it was consistent when we 9 did list price changes, you know, at the time 10 we -- at the time we did list price changes and 11 if we were doing a commercial price list then we 12 would incorporate their pocket reference, but if 13 we didn't do a commercial price list, when we 14 did price increases, we did not do a pocket 15 reference. It was part of that. 16 Q. So is it fair to say, then, that the 17 creation and dissemination by your department of 18 a BMS pocket reference usually corresponded to 19 list process changes? 20 A. Correct. 21 Q. Does it say BMS pocket reference on it? 22 A. It says pocket reference. It may say</p>
<p style="text-align: right;">111</p> <p>1 A. We stopped -- I don't recall when we 2 stopped. We stopped doing a lot of official 3 publications. We weren't turning around list 4 price and so the pocket reference was part of 5 that official public documentation that we stopped. 6 Q. You do recall you stopped, that your 7 area stopped providing the pocket reference at 8 some point? 9 A. At some point, yes. 10 Q. And you believe that that postdates 11 the 1990s? 12 A. You know, I don't recall when we 13 actually stopped producing them. 14 Q. Did you provide those to counsel in 15 this litigation? 16 A. Yes. 17 Q. Did you have all the copies of those? 18 A. Probably not. 19 Q. Why not? 20 A. You know, if we had produced two or 21 three within the year, there may have been one 22 copy that we had run out of inventory, so again,</p>	<p style="text-align: right;">113</p> <p>1 Bristol-Myers Squibb oncology pocket reference 2 or, you know, whatever -- 3 MR. MATT: Off the record. 4 (Discussion off the record.) 5 Q. The first page of this document, 6 Exhibit Kaszuba 009, talks about the price authorization 7 system. 8 A. Correct. 9 Q. What is that? 10 A. Price authorization system is the data 11 results for our list price system. Again, this 12 is what COPS uses for invoicing purposes. 13 Q. Is the price authorization system 14 something different from the list price master 15 file? 16 A. No, it is the same. 17 Q. It is the same? 18 A. Different -- yeah, it is the same. 19 Q. And below, back to paragraph number 5 20 on the first page, it talks about a markup factor? 21 A. Yes. 22 Q. That is a markup factor applied to the</p>

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<p style="text-align: right;">114</p> <p>1 wholesale list price for one, for the</p> <p>2 wholesaler, it doesn't have anything to do -- it</p> <p>3 is not a markup factor that is used to determine</p> <p>4 an AWP, correct?</p> <p>5 A. No, it is not.</p> <p>6 Q. Other than the BMS pocket reference</p> <p>7 that we just went over, are there any other</p> <p>8 pricing materials that your department sends</p> <p>9 oncology salespeople?</p> <p>10 A. No.</p> <p>11 The sales force?</p> <p>12 Q. Yes, the sales force.</p> <p>13 A. No.</p> <p>14 Q. I have a number of policy and</p> <p>15 procedure documents I need your help with.</p> <p>16 I am going to mark these as three</p> <p>17 separate exhibits.</p> <p>18 (Exhibit Kaszuba 010, documents bearing</p> <p>19 production Nos. BMS/AWP/00337637 through</p> <p>20 BMS/AWP/00337641, marked for identification,</p> <p>21 as of this date.)</p> <p>22 (Exhibit Kaszuba 011, documents bearing</p>	<p style="text-align: right;">116</p> <p>1 and Procedures" and its Bates numbers are</p> <p>2 00337310 to 315.</p> <p>3 My first question to you, Ms. Kaszuba,</p> <p>4 is do you recognize any of these three documents?</p> <p>5 A. I do recognize the documents.</p> <p>6 Q. What are they?</p> <p>7 A. They are actually procedure for</p> <p>8 pricing support.</p> <p>9 Q. Do you know who prepared them?</p> <p>10 A. I did.</p> <p>11 Q. Do you know when they were prepared?</p> <p>12 A. Over, I think, a period from, like,</p> <p>13 1999 until maybe 2001-2002. I am not certain.</p> <p>14 Q. Are these three different iterations?</p> <p>15 A. Three different, appears to be.</p> <p>16 Q. Over time, you think?</p> <p>17 A. Over time, yes.</p> <p>18 Q. Do you have the ability to determine</p> <p>19 which was the first one that you prepared?</p> <p>20 A. No, I don't.</p> <p>21 Q. Do you have the ability to determine</p> <p>22 which the last one was that you prepared?</p>
<p style="text-align: right;">115</p> <p>1 production Nos. BMS/AWP/00912299 through</p> <p>2 BMS/AWP/00912305, marked for identification,</p> <p>3 as of this date.)</p> <p>4 (Exhibit Kaszuba 012, documents bearing</p> <p>5 production Nos. BMS/AWP/00337310 through</p> <p>6 BMS/AWP/00337315, marked for identification,</p> <p>7 as of this date.)</p> <p>8 Q. The court reporter has marked as</p> <p>9 Exhibit Kaszuba 010, Exhibit Kaszuba 011 and</p> <p>10 Exhibit Kaszuba 012 to your deposition</p> <p>11 documents that I would characterize as</p> <p>12 substantially similar but not necessarily</p> <p>13 identical, and just for the record, I am going</p> <p>14 to associate Bates numbers with the exhibit</p> <p>15 numbers.</p> <p>16 A. Okay.</p> <p>17 Q. Exhibit Kaszuba 010 is Bates numbered 00337637</p> <p>18 to 641.</p> <p>19 Exhibit Kaszuba 011 has a cover page that says</p> <p>20 "Policy and Procedures" and that is Bates</p> <p>21 numbered 00912299 to 305 and Exhibit Kaszuba 012</p> <p>22 also has a cover page on it that says "Policy</p>	<p style="text-align: right;">117</p> <p>1 A. No, I don't.</p> <p>2 Q. Why did you prepare these?</p> <p>3 A. Instructional for the pricing support</p> <p>4 coordinators.</p> <p>5 Q. So you provided that to the pricing</p> <p>6 support coordinators?</p> <p>7 A. Correct.</p> <p>8 Q. Did you provide that to anyone else?</p> <p>9 A. Not that I recall.</p> <p>10 Q. At the time that you prepared these,</p> <p>11 were they accurate reflections of the policies</p> <p>12 and procedures in pricing support?</p> <p>13 A. They may have been. Notifications may</p> <p>14 have been made because -- yes, this -- you know,</p> <p>15 again, this is a guide to the pricing support</p> <p>16 coordinator.</p> <p>17 Q. Let me ask the question a little more</p> <p>18 precisely, then.</p> <p>19 At the time you prepared what has been</p> <p>20 marked as Exhibit Kaszuba 010, at the time it was</p> <p>21 prepared, was it an accurate reflection of the</p> <p>22 pricing procedures employed by pricing support</p>

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<p style="text-align: right;">118</p> <p>1 at the time?</p> <p>2 A. It is a fair, accurate guide.</p> <p>3 Q. Exhibit Kaszuba 010, looking at the second</p> <p>4 page, the Bates numbers ending 38, the first two</p> <p>5 paragraphs, that tells me that this was created</p> <p>6 during the time BMS had two-tier pricing; is</p> <p>7 that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Paragraph 4 references Apothecon list</p> <p>10 prices.</p> <p>11 A. Correct.</p> <p>12 Q. Were the Apothecon list prices always</p> <p>13 found under billing category 51?</p> <p>14 A. No.</p> <p>15 Q. What other billing categories applied</p> <p>16 to Apothecon drugs then?</p> <p>17 A. Other billing categories that applied</p> <p>18 to Apothecon were 51, 56, 57, 58, 59, and then</p> <p>19 41 through 4-G.</p> <p>20 Q. And then do you know what purchasers</p> <p>21 billing category 51 referred to?</p> <p>22 A. 51 was a wholesaler billing category.</p>	<p style="text-align: right;">120</p> <p>1 under the reimbursement policies of insurers."</p> <p>2 Q. What was the source of your</p> <p>3 information for that?</p> <p>4 A. I don't recall the persons or the</p> <p>5 department.</p> <p>6 Q. But you would have obtained that</p> <p>7 information from somewhere outside of pricing</p> <p>8 support?</p> <p>9 A. Yes, I would have.</p> <p>10 Q. Could you please turn forward now to</p> <p>11 page 640.</p> <p>12 Number 3 says "Package Insert."</p> <p>13 A. Correct.</p> <p>14 Q. Could you read beginning with "If</p> <p>15 product is not added, the following occurs."</p> <p>16 A. "The AWP, average wholesale price, is</p> <p>17 not established, reimbursement of drug costs by</p> <p>18 insurance companies directly or through third</p> <p>19 party insurers is denied without product</p> <p>20 information. NAWP products will not be added to</p> <p>21 state formularies."</p> <p>22 Q. When you reference state formularies,</p>
<p style="text-align: right;">119</p> <p>1 Q. What was 56?</p> <p>2 A. 56 was a nonretail.</p> <p>3 Q. What was 57?</p> <p>4 A. 57 was retail.</p> <p>5 Q. And 58?</p> <p>6 A. And 58 was nonretail.</p> <p>7 Q. What does nonretail mean?</p> <p>8 A. It is a hospital or clinic.</p> <p>9 Q. And 59, billing category 5, what was</p> <p>10 that?</p> <p>11 A. 59 is physician.</p> <p>12 Q. Could you read the sentence beginning</p> <p>13 "If we never."</p> <p>14 A. "If we never sell these multisource</p> <p>15 products at the high billing category 51 price,</p> <p>16 why not reduce the bill cap 51, 56, 57, 58 and</p> <p>17 59 price."</p> <p>18 Q. Can you read the next paragraph,</p> <p>19 please.</p> <p>20 A. "Since the AWP, average wholesale</p> <p>21 price, is calculated based on the wholesale</p> <p>22 list, retailers benefit from a high AWP price</p>	<p style="text-align: right;">121</p> <p>1 what does that refer to?</p> <p>2 A. That refers to Medicaid, state</p> <p>3 agencies.</p> <p>4 Q. Exhibit Kaszuba 011 is another policy and</p> <p>5 procedures document.</p> <p>6 At the time you prepared this document</p> <p>7 which has been marked as Exhibit Kaszuba 011 to your</p> <p>8 deposition, do you believe that it represented a</p> <p>9 fair and accurate representation of the pricing</p> <p>10 support policies and procedures?</p> <p>11 A. Yes.</p> <p>12 Q. This appears to be from the time</p> <p>13 period in which BMS employed two-tier pricing,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Those are all of the questions I have</p> <p>17 on that one.</p> <p>18 Exhibit Kaszuba 012, another policy and</p> <p>19 procedures document, at the time you prepared</p> <p>20 this document represented as Exhibit Kaszuba 012, did</p> <p>21 you believe that it was a fair and accurate</p> <p>22 representation of the policy and procedures of</p>

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<p style="text-align: right;">146</p> <p>1 Q. So this is an example of the printout 2 from the Red Book showing discontinued products? 3 A. They are asking us to verify whether 4 these products are discontinued or we still sell 5 them. 6 Q. What would you do with this once you 7 received it? 8 A. Actually, we would just identify if 9 these products were still being sold, and if 10 they weren't, we would just tell them to 11 discontinue them. We would give her the last 12 ship date. 13 Q. Exhibit Kaszuba 024 to your deposition is a 14 document that's marked with Bates numbers 15 0000478 to 482, and my question is, is this an 16 example of the use of Western Union mailgram? 17 A. It is. 18 Q. This was something that you created, 19 correct? 20 A. Correct. 21 Q. Do you know who this was sent to? 22 A. This was sent to customers other than</p>	<p style="text-align: right;">148</p> <p>1 Westwood Pharmaceuticals-Squibb. 2 Q. Is Westwood in New Jersey, does it 3 have any geographical significance? 4 A. Westwood is the dermatology products 5 and pretty much what does remain is out of 6 Plainsboro. 7 Q. Exhibit Kaszuba 025 to your deposition is a 8 document which contains the Bates numbers 9 0011236 to 240. It looks like a fax from Terri 10 Dunn to Larry Taylor. 11 The third page in, Bates number 238, 12 is this a fax that you received from Larry 13 Taylor at First Data Bank? 14 A. We would have received these 15 sporadically, correct. 16 Q. He is asking you to verify a shipment? 17 A. Correct. 18 Q. Indeed; it says, "To avoid any 19 inconsistencies with your pricing, either 20 wholesale, net, direct and/or AWP pricing, 21 please verify and document and necessary 22 corrections."</p>
<p style="text-align: right;">147</p> <p>1 wholesalers. 2 Q. How were you able to make that 3 determination from looking at the document? 4 A. The direct price per unit, the column 5 heading. 6 Q. Because if it was wholesalers, it 7 would say -- 8 A. At this point, if it was wholesalers, 9 and at this point in time it would have said 10 wholesale list price per unit or wholesale price 11 per unit. 12 Q. When did BMS begin using the phrase 13 Westwood-Squibb Pharmaceuticals? 14 A. Westwood-Squibb? 15 Q. Yes. 16 A. In the '96-'97-'98, in that area. 17 Again, Squibb, prior to '95, was 18 actually distributed out of Buffalo and even 19 though it was always a subsidiary of 20 Bristol-Myers, they brought the order to cash 21 process to Plainsboro, New Jersey. That's when 22 I know we started to address it as Westwood-Squibb,</p>	<p style="text-align: right;">149</p> <p>1 What action did you take in response 2 to this letter? 3 A. Just by the checkmarks, I can see that 4 she was verifying the wholesale list price. 5 Q. That isn't your checkmark? 6 A. No, that's not mine. This isn't -- 7 this looks like Terri Dunn. 8 Q. She was a project coordinator, 9 correct, pricing coordinator? 10 A. Correct. 11 Q. Exhibit Kaszuba 026 is a Red Book product 12 listing verification. This has the Bates 13 numbers 0005609 to 5622. 14 What is this document? 15 A. This document is actually provided 16 from the Red Book database and they provide it 17 annually or semiannually and what they are 18 doing, they request the pharmaceutical companies 19 to verify product, product and pricing 20 information. 21 Our role was to verify the product 22 information and plus list price or actually</p>

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<p style="text-align: right;">150</p> <p>1 wholesale list at this time and direct price and 2 product if it's active or not. 3 Q. The copy that we have, the column 4 headings didn't turn out. The first column that 5 has 82 - the column which has 8278 in it on the 6 first page, do you see that column right here? 7 A. Yes. 8 Q. What is that? Is that the AWP? 9 A. I don't know, I have no idea. 10 Q. What about the column, it says 6616. 11 Do you know what column that is? 12 A. No. Without the headings, I would not 13 know. 14 Q. Is that Barbara Goetz' signature at 15 the very bottom of each page? 16 A. Yes. 17 Q. What does that signify? 18 A. Actually what it is signifying, she is 19 proofing the product information and she is 20 proofing the list price information. 21 Q. Take a look at Exhibit Kaszuba 027 next. 22 A. Sure.</p>	<p style="text-align: right;">152</p> <p>1 looking at it. 2 Q. The one after that says AWP; is that 3 correct? 4 A. It could. 5 Q. I guess if we had a calculator we 6 could probably figure that out because you could 7 multiply WAC times the market factor, right? 8 A. Yes. 9 Q. Exhibit Kaszuba 027 also has Barbara Goetz' 10 signature, correct? 11 A. Correct. 12 Q. She is signing that in the course of 13 her responsibilities as a BMS employee; is that 14 correct? 15 A. She is. 16 Q. The same question with respect to 17 Exhibit Kaszuba 026, did Barbara Goetz sign that in her 18 role as a BMS employee? 19 A. Yes, she did. 20 Q. Thank you. 21 Going now to Exhibit Kaszuba 028, this is a 22 document with Bates numbers 0005551 to 570.</p>
<p style="text-align: right;">151</p> <p>1 Q. This is also a Red Book product 2 listing and it contains the Bates numbers 3 0005571 to 5608. 4 If you will look at page 597, it looks 5 like we can read the column headings. 6 A. Okay. 7 Q. The last column is price effective 8 date, correct? 9 A. Correct. 10 Q. The next column, what does that say, 11 based on your experience with these reports? 12 A. The one preceding that? 13 Q. Yes. 14 A. You know, I don't know. 15 Q. SWP? 16 A. It's been years since I have looked at 17 these documents, so I really - 18 Q. The column next to that is WAC, correct? 19 A. Correct. 20 Q. And the one next to that, do you 21 believe that is direct price? 22 A. I believe it is direct, just by</p>	<p style="text-align: right;">153</p> <p>1 Is this a fax from Wyndy Jones of 2 MediSpan to yourself? 3 A. It is. 4 Q. What information is she transmitting? 5 A. She is transmitting NDC, product name, 6 unit of measure, she is providing WAC, direct 7 price, AWP, effective date and another date I 8 can't read. 9 Q. Did you request this information? 10 A. I am assuming I did. 11 Q. For what purpose would you have 12 requested this? 13 A. The purpose is for product information 14 verification, that she has actually input the 15 correct wholesale price, and also I am assuming 16 for the AWP to include on an internal price 17 list. 18 Q. Exhibit Kaszuba 029 is Bates numbered 0005237. 19 This is a May 13, 1997 letter from Barbara Goetz 20 to Carol Flanagan at Medical Economics. 21 A. Correct. 22 Q. Was Barbara Goetz acting under your</p>

Exhibit 82

Dianne C. Ihling

August 12, 2005

New York, NY

1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
MDL Docket No. 01Cv12257-PBS

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In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

-----*
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
-----*

Friday, August 12, 2005

New York, New York

Time: 9:06 a.m.

Deposition of DIANNE C. IHLING, held at .
the offices of Hogan & Hartson, LLP, 875 Third
Avenue, New York, New York, as taken before
Josephine H. Fassett, a Shorthand Reporter and
Notary Public of the State of New York.

Henderson Legal Services
(202) 220-4158

Dianne C. Ihling

August 12, 2005

New York, NY

<p style="text-align: right;">90</p> <p>1 whether it was 20 or 25 percent?</p> <p>2 A No.</p> <p>3 Q How about for Redbook, are you</p> <p>4 familiar with the markup factor applied by</p> <p>5 Redbook?</p> <p>6 A I always assumed that it was the</p> <p>7 same but I don't know, I don't know specifically.</p> <p>8 Q Okay. And did you at any point in</p> <p>9 time in your responsibilities as Director of</p> <p>10 Pricing and Institutional Operations work with the</p> <p>11 publications on determining that markup factor?</p> <p>12 A No, never.</p> <p>13 Q How are AWP's used in the industry</p> <p>14 based on your experience?</p> <p>15 MR. EDWARDS: Object to the form.</p> <p>16 Used by who?</p> <p>17 MR. MATT: Just, you know,</p> <p>18 industry -- well, strike that, I'll be more</p> <p>19 specific.</p> <p>20 BY MR. MATT:</p> <p>21 Q Would you agree that during the time</p> <p>22 you were employed by BMS that governmental and</p>	<p style="text-align: right;">92</p> <p>1 MR. MATT: I didn't finish it.</p> <p>2 BY MR. MATT:</p> <p>3 Q Are you aware that Medicare used it</p> <p>4 as a reimbursement benchmark in its formula</p> <p>5 reimbursing for Part B drugs?</p> <p>6 MR. EDWARDS: Objection.</p> <p>7 A I'm vaguely aware of that, I don't</p> <p>8 have specific knowledge of it.</p> <p>9 Q So you're more familiar with the use</p> <p>10 of AWP to have at the pharmacy level because of</p> <p>11 your prior experience working at CareMark or, I'm</p> <p>12 sorry, PCS?</p> <p>13 A I am more familiar with the</p> <p>14 reimbursement constructs of a large PBM.</p> <p>15 Q In your experience they were all</p> <p>16 based on AWP, correct?</p> <p>17 A To the best of my recollection.</p> <p>18 MR. EDWARDS: Objection. Note my</p> <p>19 objection.</p> <p>20 Go ahead.</p> <p>21 Q To the best of your recollection</p> <p>22 yes?</p>
<p style="text-align: right;">91</p> <p>1 private payers had adopted an industry practice of</p> <p>2 using AWP's as a benchmark for determining</p> <p>3 reimbursement rates?</p> <p>4 MR. EDWARDS: Object to the form.</p> <p>5 It assumes facts not in evidence.</p> <p>6 Go ahead.</p> <p>7 THE WITNESS: Go ahead?</p> <p>8 MR. EDWARDS: Yes.</p> <p>9 A Okay. During the time that I was</p> <p>10 employed by Bristol-Myers Squibb and prior to that</p> <p>11 the figure known as Average Wholesale Price was</p> <p>12 used as, to my knowledge, as a benchmark when</p> <p>13 reimbursing when -- sorry -- when people went to</p> <p>14 the pharmacy to buy their drug product.</p> <p>15 Q So you're familiar that Medicare</p> <p>16 used it as a reimbursement?</p> <p>17 A I don't have specific knowledge.</p> <p>18 MR. EDWARDS: Object.</p> <p>19 Let's hear the end of the</p> <p>20 question. You sort of mumbled at the end</p> <p>21 of your question and I want to make sure</p> <p>22 I understand the question.</p>	<p style="text-align: right;">93</p> <p>1 A To the best of my recollection most</p> <p>2 pharmacy, most PBM formulas are an AWP-based</p> <p>3 formula.</p> <p>4 Q Did you or anyone under your</p> <p>5 supervision ever conduct a survey of wholesalers</p> <p>6 in order to determine whether the market factors</p> <p>7 applied by the publishers to the BMS list prices</p> <p>8 were accurate in that they reflected the real</p> <p>9 prices in the marketplace?</p> <p>10 MR. EDWARDS: Objection. Assumes</p> <p>11 facts not in evidence.</p> <p>12 Go ahead.</p> <p>13 A I don't believe so.</p> <p>14 Q You just don't recall whether that</p> <p>15 was ever done under your supervision?</p> <p>16 A I don't recall and I don't believe</p> <p>17 that -- I don't believe that was done by anyone in</p> <p>18 my department.</p> <p>19 Q Okay. Is there a particular reason</p> <p>20 why it was not done?</p> <p>21 A I don't -- I mean, the company</p> <p>22 doesn't set AWP so I --</p>

Exhibit 83

Christof A. Marre

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Cambridge, MA

August 26, 2005

<p style="text-align: right;">26</p> <p>1 BMS. We discussed pricing for other multisource 2 products. We discussed private label strategies. 3 We also discussed generic defense strategies for 4 Paraplatin. 5 Q. How often would you communicate with these 6 individuals at OTN? 7 A. Typically, once or twice a week. 8 Q. Have you heard of the phrase One BMS? 9 A. Yes. 10 Q. And what does that mean to you? 11 A. I believe this phrase was coined by Peter 12 Dolan shortly after he became CEO, and the idea was 13 to have the different parts that make up BMS work 14 together as one company. 15 Q. And is it your understanding that applied 16 to BMS and OTN? 17 A. Yes. 18 Q. OTN was a wholly-owned subsidiary of BMS 19 at the time you worked there, right? 20 A. Right. 21 Q. Did you work with the BMS oncology sales 22 force?</p>	<p style="text-align: right;">28</p> <p>1 Q. Oh, ride-along -- 2 A. Yes. 3 Q. -- to visits with the clients? 4 A. Correct. 5 Q. So, have you visited clients with 6 office-based oncology clients before? 7 A. Yes, both office-based and hospital-based 8 oncology. 9 Q. On the visits that you were participating 10 in, what did you learn about the concerns of the 11 office-based oncology physicians and staff? 12 A. In which of my functions? 13 Q. Still sticking with the marketing manager 14 function. 15 A. Okay. We would learn more about how 16 physicians make decisions when they treat patients 17 with any of the tumor types that I was responsible 18 for. 19 Q. Did you discuss pricing? 20 A. No. 21 Q. No. When you use the acronym, "POA," is 22 that an acronym for plan of attack?</p>
<p style="text-align: right;">27</p> <p>1 A. I did. 2 Q. And can you please describe the nature of 3 your work with the sales force. 4 A. In which of my capacities? 5 Q. Start with the first one, marketing 6 manager. 7 A. As a marketing manager, one of my roles 8 was to create tactics and programs that could be 9 used by our sales force. The main interaction with 10 the sales force was during the POA meetings, which 11 are the sales meetings which take place twice a 12 year where I would present the tactics and programs 13 to them. I would also interact on an ad hoc basis 14 to communicate the availability of new tactics and 15 programs. I would also spend time with individual 16 members of the sales force during field trips, on 17 sales force advisory boards, or if they contacted 18 me with questions. 19 Q. "Field trips," what does that mean? 20 A. That is the name for somebody from the 21 home office spending time with somebody in the 22 field. It's a ride-along with the sales rep.</p>	<p style="text-align: right;">29</p> <p>1 A. Plan of action. 2 Q. Plan of action. In your role as marketing 3 manager, when you said you create programs for use 4 by the sales force, can you give some examples? 5 A. Yes. We would, for one, offer training to 6 the sales force on the disease state and on 7 different drugs used to treat those tumors and on 8 the outcome of different trials with different 9 drugs in those tumor types. 10 We would also offer education, educational 11 programs that our sales force could then roll out 12 to their customers. We also put together medical 13 information to answer requests by physicians on 14 these tumor types. 15 Q. And that medical information is in 16 documents that a salesperson can leave with a 17 physician? 18 A. No, these were documents that physicians 19 could request and that would be sent directly to 20 the physician from our medical information 21 department. 22 Q. In your role as a marketing manager, did</p>

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<p style="text-align: right;">34</p> <p>1 using contracts an advantage?</p> <p>2 A. Typically, hospitals and office-based</p> <p>3 oncologists don't buy directly from a manufacturer.</p> <p>4 They buy their products from a wholesaler or</p> <p>5 distributor. The fact that we have a sales force</p> <p>6 that calls on oncologists, however, gives us direct</p> <p>7 access to these customers. And we were competing</p> <p>8 with generic manufacturers who, for the most part,</p> <p>9 had to rely on distributors and wholesalers,</p> <p>10 because they didn't have a sales force or didn't</p> <p>11 have a large sales force with the reach that we</p> <p>12 did. So, this was a competitive advantage for</p> <p>13 Bristol-Myers Squibb that we wanted to leverage.</p> <p>14 Q. So, is the advantage then in having a</p> <p>15 direct relationship through the contract, even</p> <p>16 though the drugs are still purchased by the</p> <p>17 customer through a wholesaler?</p> <p>18 A. That's correct.</p> <p>19 Q. Is that accurate?</p> <p>20 A. So, they continue to buy the drug from the</p> <p>21 wholesaler, but the wholesaler will respect and</p> <p>22 apply whatever price we've negotiated directly with</p>	<p style="text-align: right;">36</p> <p>1 A. No, the overall market.</p> <p>2 Q. The overall market. What are some of the</p> <p>3 largest hospitals that BMS had contracts with?</p> <p>4 A. Memorial Sloan Kettering, M.D. Anderson,</p> <p>5 University of Michigan, Fox Chase Cancer Center.</p> <p>6 Q. Those are the big ones that come to mind?</p> <p>7 A. Yeah.</p> <p>8 Q. Where is Fox Chase located?</p> <p>9 A. Philadelphia.</p> <p>10 Q. M.D. Anderson's in Houston, right?</p> <p>11 A. Right.</p> <p>12 Q. Memorial Sloan Kettering is New York?</p> <p>13 A. New York City.</p> <p>14 Q. And Michigan is in Ann Arbor?</p> <p>15 A. Yeah.</p> <p>16 Q. Do you know what percentage of the sales</p> <p>17 of BMSO drugs were done under contract?</p> <p>18 A. No.</p> <p>19 Q. No? Do you know the approximate</p> <p>20 percentage of all oncology customers that purchased</p> <p>21 BMSO drugs under a contract with BMS?</p> <p>22 A. No.</p>
<p style="text-align: right;">35</p> <p>1 the customer.</p> <p>2 Q. Was it your goal to have BMS sign</p> <p>3 contracts with most of the large hospitals in the</p> <p>4 country?</p> <p>5 A. Yes.</p> <p>6 Q. And were you successful in that goal?</p> <p>7 A. I believe we were successful. I can't say</p> <p>8 exactly how many contracts we signed, but it must</p> <p>9 have been in the 50s.</p> <p>10 Q. Percentile?</p> <p>11 A. No, 50 contracts with 50 institutions.</p> <p>12 Q. And do you have any sort of an</p> <p>13 appreciation for what percentage of the market for</p> <p>14 hospital oncology drugs those 50 or so institutions</p> <p>15 represented?</p> <p>16 A. I don't recall the exact percentage for</p> <p>17 that segment of the market. Our overall share of</p> <p>18 the Paclitaxel business, for example, or for other</p> <p>19 products that had generic competition must have</p> <p>20 been around 50 percent.</p> <p>21 Q. And are you speaking specifically to the</p> <p>22 hospital market?</p>	<p style="text-align: right;">37</p> <p>1 Q. No. So, is it just too general a question</p> <p>2 for you to be able to answer?</p> <p>3 A. Yeah.</p> <p>4 Q. How did BMS determine which organizations</p> <p>5 to sign contracts with?</p> <p>6 A. The primary determinant was the sales</p> <p>7 volume, and I guess the second determinant was</p> <p>8 their willingness to do contracting.</p> <p>9 Q. And when you say, "sales volume," what do</p> <p>10 you mean?</p> <p>11 A. Number of units they buy.</p> <p>12 Q. So, that's another way of saying --</p> <p>13 targeting the larger organizations?</p> <p>14 A. Yeah. Uh-huh.</p> <p>15 Q. And the contracts, did they always contain</p> <p>16 pricing that was lower than the wholesale list</p> <p>17 price that BMS offered products at, right?</p> <p>18 A. Yes, although there were some products</p> <p>19 that we would not offer contract pricing on.</p> <p>20 Q. And what products -- and what products</p> <p>21 were they and at what point in time?</p> <p>22 A. Uh-huh. Well, Paraplatin was the main</p>

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<p style="text-align: right;">38</p> <p>1 product that for a long time we didn't offer</p> <p>2 discounts to most customers. And only when it came</p> <p>3 closer to losing exclusivity did we start</p> <p>4 considering offering some small discounts.</p> <p>5 Q. So, you didn't offer discounts before the</p> <p>6 time that you got close to the loss of exclusivity,</p> <p>7 because it was -- the only product in -- in other</p> <p>8 words, it didn't have any competition at that point</p> <p>9 in time, right?</p> <p>10 A. That's correct. But we did have some</p> <p>11 customers who did receive discounts or some other</p> <p>12 price consideration even before that.</p> <p>13 Q. And the contract -- the prices contained</p> <p>14 in contracts between BMS and customers, those are</p> <p>15 confidential and not publicly available, correct?</p> <p>16 A. Yeah.</p> <p>17 Q. I'll just make sure I understand the</p> <p>18 contracting process with office-based oncologists.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Those were signed through OTN?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. But the contracts that OTN would</p>	<p style="text-align: right;">40</p> <p>1 about earlier, were the average wholesale prices of</p> <p>2 drugs generally discussed?</p> <p>3 A. Which meetings?</p> <p>4 Q. At the POA meetings.</p> <p>5 A. No.</p> <p>6 Q. Were there any discussions of the</p> <p>7 differences between the AWP's and actual -- actual</p> <p>8 acquisition costs of drugs?</p> <p>9 A. Well, when we became more involved with</p> <p>10 contracting, we would talk about the price erosion</p> <p>11 of the price for Taxol, for example.</p> <p>12 Q. And how would that relate to AWP's?</p> <p>13 A. When almost any drug has exclusivity, you</p> <p>14 sell the drug at list price. But once you face</p> <p>15 generic competition, the generics try to gain</p> <p>16 market share by bringing the price down and</p> <p>17 offering discounts to their customers. So, as the</p> <p>18 branded company, your choice is either to quickly</p> <p>19 lose business if you don't bring your contract</p> <p>20 prices in line with the market, or to offer</p> <p>21 competitive prices and hope to maintain a</p> <p>22 significant volume share of the market.</p>
<p style="text-align: right;">39</p> <p>1 offer its customers originated in your department,</p> <p>2 right?</p> <p>3 A. The way I would put it was the contract</p> <p>4 was written by OTN, because they represented many</p> <p>5 different manufacturers and had many types of</p> <p>6 contracts, but whenever the contracts included BMS</p> <p>7 products, we would get involved in revising the</p> <p>8 contract language and approving the terms and</p> <p>9 conditions.</p> <p>10 Q. Including price.</p> <p>11 A. Right.</p> <p>12 Q. And was there a specific person at OTN you</p> <p>13 would work with on that one issue?</p> <p>14 A. I think there were a number of people</p> <p>15 involved with that. The one person who I</p> <p>16 interacted with the most until he left OTN was</p> <p>17 Sandy McMahon.</p> <p>18 Q. And do you know when he left OTN?</p> <p>19 A. I don't recall the exact date.</p> <p>20 Q. Was it before you left BMS?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And the POA meetings you talked</p>	<p style="text-align: right;">41</p> <p>1 Q. Okay. Has that -- I discern from an</p> <p>2 earlier answer that there was some relation between</p> <p>3 that and AWP, and that's what I'm trying to follow</p> <p>4 up. I believe my initial question asked whether</p> <p>5 there were any discussions between -- about the</p> <p>6 difference between the average wholesale price for</p> <p>7 a drug and its actual acquisition cost.</p> <p>8 A. I think we were more interested in the</p> <p>9 difference between the price that we offered to our</p> <p>10 customers and the price that the generic</p> <p>11 competitors would offer to the customers.</p> <p>12 Q. Does that mean that you've never discussed</p> <p>13 AWP with anyone at BMS?</p> <p>14 A. No. Of course, where relevant, we are</p> <p>15 going to discuss AWP.</p> <p>16 Q. Let me then explore with you the use of</p> <p>17 AWP --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- that you made when you were director of</p> <p>20 marketing.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Let me lay some foundations first. What</p>

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<p style="text-align: right;">42</p> <p>1 is your understanding of the term "AWP"?</p> <p>2 A. Average wholesale price.</p> <p>3 Q. Is it an average of wholesale prices in</p> <p>4 the market?</p> <p>5 A. It's a price that gets published in</p> <p>6 Redbook and First Data Source that we don't have</p> <p>7 direct control over.</p> <p>8 Q. And that was your understanding when you</p> <p>9 were marketing director back in 2000 —</p> <p>10 A. That was my understanding, yeah.</p> <p>11 Q. And do you understand the relationship</p> <p>12 between BMS wholesale list price —</p> <p>13 A. Uh-huh.</p> <p>14 Q. — and AWP?</p> <p>15 A. Well, my understanding is that we</p> <p>16 controlled our list price, and we would submit our</p> <p>17 list prices to these different publications, and</p> <p>18 they would then apply some kind of formula to</p> <p>19 arrive at AWP, which would then — they would then</p> <p>20 publish.</p> <p>21 Q. And are you familiar with what that</p> <p>22 formula was? Was it a markup factor?</p>	<p style="text-align: right;">44</p> <p>1 other wholesalers or distributors.</p> <p>2 Q. So, you don't believe then that the</p> <p>3 wholesalers were selling those drugs at those</p> <p>4 margins?</p> <p>5 A. I don't believe that, no.</p> <p>6 Q. And were the margins — what do you</p> <p>7 believe the wholesaler margins are?</p> <p>8 A. They're minimal.</p> <p>9 Q. It's 1 to 3 percent, right?</p> <p>10 A. Yeah, I think the wholesaler margin is</p> <p>11 primarily the prompt payment discount that we</p> <p>12 provide.</p> <p>13 Q. And is that usually 1 or 2 percent?</p> <p>14 A. I think those are typical prompt payment</p> <p>15 discounts.</p> <p>16 Q. And just so the record's clear, those are</p> <p>17 discounts that BMS offers to wholesalers if they</p> <p>18 pay within a certain time period, right?</p> <p>19 A. Right.</p> <p>20 Q. Is that usually 30 days?</p> <p>21 A. It can be staggered, 30, 60, 90 days, and</p> <p>22 the sooner you pay, the higher the prompt payment</p>
<p style="text-align: right;">43</p> <p>1 A. Yes, it was always confusing to me, and it</p> <p>2 wasn't really relevant to my activities, so my</p> <p>3 understanding is that the factor was 1.25 or 1.3,</p> <p>4 but it wasn't clear to me which factor applied to</p> <p>5 which company to which publication.</p> <p>6 Q. Did you believe that there were purchasers</p> <p>7 in the marketplace that would actually buy BMS</p> <p>8 drugs at the AWP?</p> <p>9 A. I don't have evidence of that. The price</p> <p>10 that most wholesalers and distributors would apply</p> <p>11 would be our list price.</p> <p>12 Q. Do you have any insight into whether</p> <p>13 wholesalers actually sold their products to</p> <p>14 customers at the AWP's that were reported by these</p> <p>15 publications?</p> <p>16 A. No, because we sold our products at our</p> <p>17 list price to the wholesaler, and it was up to them</p> <p>18 at which price they would sell it on to their</p> <p>19 customers. But since there's competition between</p> <p>20 different wholesalers and different distributors,</p> <p>21 they wouldn't be able to command a 25 or 30 percent</p> <p>22 margin. They would quickly be turned down by the</p>	<p style="text-align: right;">45</p> <p>1 discount.</p> <p>2 Q. Okay. As director of marketing, did it</p> <p>3 ever concern you that there were average wholesale</p> <p>4 prices being reported for BMS oncology drugs that</p> <p>5 did not reflect the margins actually realized by</p> <p>6 wholesalers?</p> <p>7 A. I never understood the term "average</p> <p>8 wholesale prices," because as we just discussed,</p> <p>9 those weren't average prices.</p> <p>10 Q. But did it ever concern you, though, was</p> <p>11 my question?</p> <p>12 A. No, I wouldn't say it concerned me.</p> <p>13 Q. And is there a particular reason why it</p> <p>14 didn't concern you, or did you just never think</p> <p>15 about it?</p> <p>16 A. I'm sorry?</p> <p>17 Q. Or did you just never think about it?</p> <p>18 A. It's one of those things that someone who</p> <p>19 joined the market in 2001 was probably a — had a</p> <p>20 historic basis. So, it may have been true at some</p> <p>21 point in time and was no longer true, and I know</p> <p>22 that in other markets I've been in in Mexico, there</p>

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<p style="text-align: right;">46</p> <p>1 was a true wholesaler markup of 18, 20 percent.</p> <p>2 So, I assumed that maybe historically that's how it</p> <p>3 had operated in the US, and that competition just</p> <p>4 had driven down those markups. That was -- if you</p> <p>5 had asked me then, that's probably how I would have</p> <p>6 answered it.</p> <p>7 Q. So, at no time did you think to take any</p> <p>8 action to try and correct the average wholesale</p> <p>9 prices that were being published.</p> <p>10 A. (Witness nods.)</p> <p>11 MR. EDWARDS: Object to the form. Assumes</p> <p>12 facts not in evidence.</p> <p>13 Q. I saw you shaking your head. I want to</p> <p>14 make sure that comes out on the record. Was that a</p> <p>15 no?</p> <p>16 A. I think we had an objection, right?</p> <p>17 Q. Yeah. I was going to let the question</p> <p>18 stand if you understand it.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Do you want the court reporter to read it</p> <p>21 back?</p> <p>22 A. So, can you repeat the question.</p>	<p style="text-align: right;">48</p> <p>1 the wholesalers made their money, and we discussed</p> <p>2 how -- at which price we sell a product to the</p> <p>3 wholesaler, at which price they sell it on to their</p> <p>4 customers and where they make their margin.</p> <p>5 Q. And you have experience with contracts,</p> <p>6 so, you know, in at least some cases, the customers</p> <p>7 are purchasing BMS products well below wholesale</p> <p>8 list price.</p> <p>9 A. Yes.</p> <p>10 Q. And that generates a charge-back that goes</p> <p>11 to the wholesaler?</p> <p>12 A. Yes.</p> <p>13 Q. So, you're familiar with the charge-back.</p> <p>14 A. Yeah.</p> <p>15 Q. And are there any other discussions that</p> <p>16 you can recall specifically having with people at</p> <p>17 BMS or OTN about AWP?</p> <p>18 A. Well -- well, I learned more about the</p> <p>19 role of AWP, ah, you know, what the real</p> <p>20 significance is, not as an average price at which</p> <p>21 the wholesaler sells, but as a price which is used</p> <p>22 to determine reimbursement, of course.</p>
<p style="text-align: right;">47</p> <p>1 MR. MATT: Why don't you go ahead.</p> <p>2 (Question read back.)</p> <p>3 A. Yeah, that's correct.</p> <p>4 Q. Is that no?</p> <p>5 A. I did not --</p> <p>6 Q. You did not, okay.</p> <p>7 A. -- take any action.</p> <p>8 Q. And did you have any discussions with</p> <p>9 anyone else at BMS about average wholesale prices?</p> <p>10 A. Yes, when I took on this responsibility</p> <p>11 for customer marketing, as part of understanding</p> <p>12 the environment, I had discussions with different</p> <p>13 people to understand how all of this worked.</p> <p>14 Q. Okay. And who, if you can recall, were</p> <p>15 you having those discussions with?</p> <p>16 A. Having discussion with my predecessor in</p> <p>17 the senior marketing role.</p> <p>18 Q. And who was that?</p> <p>19 A. Michael Talonie.</p> <p>20 Q. And can you specifically recall what Mr.</p> <p>21 Talonie told you about AWP?</p> <p>22 A. Well, I was interested to find out where</p>	<p style="text-align: right;">49</p> <p>1 Q. So, you understand that, until recently,</p> <p>2 AWP was used in the reimbursement form or for</p> <p>3 Medicare Part B drugs, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And that it was also utilized by private</p> <p>6 insurers, correct?</p> <p>7 A. That's my understanding.</p> <p>8 Q. And what about Medicaid programs, are you</p> <p>9 aware the Medicaid programs utilize AWP in their</p> <p>10 reimbursement formulas?</p> <p>11 A. I'm not that familiar with Medicaid</p> <p>12 reimbursement.</p> <p>13 Q. And who educated you, so-to-speak, about</p> <p>14 these reimbursement concepts based on AWP?</p> <p>15 A. I attended a seminar provided by NOCR,</p> <p>16 network for -- I don't know exactly what it means</p> <p>17 -- NOCR.</p> <p>18 Q. NOCR?</p> <p>19 A. Yeah.</p> <p>20 Q. Is that a --</p> <p>21 A. I did my own reading, different sources,</p> <p>22 like the ACCC publications. I -- as part of my</p>

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<p style="text-align: right;">78</p> <p>1 A. Uh-huh.</p> <p>2 Q. Do you remember that question?</p> <p>3 A. Yes.</p> <p>4 Q. And I believe one of your answers was the</p> <p>5 competitive intelligence, if you were — that you</p> <p>6 were receiving on contract prices?</p> <p>7 A. Yeah. Uh-huh.</p> <p>8 Q. Did you also look at the competitor's</p> <p>9 AWP's?</p> <p>10 A. No.</p> <p>11 Q. Or the competitor's WACs?</p> <p>12 A. No.</p> <p>13 Q. So, your focus was on contract pricing.</p> <p>14 A. Yeah.</p> <p>15 Q. For my work in this case, I'm familiar</p> <p>16 with the different ways in which BMS provided</p> <p>17 discounts off of wholesale list price.</p> <p>18 A. Uh-huh.</p> <p>19 Q. And I want to just see if you're familiar</p> <p>20 with the same contracts. We have contract prices</p> <p>21 that we've already discussed today, right?</p> <p>22 A. Yeah.</p>	<p style="text-align: right;">80</p> <p>1 Q. Administration fees. What is an</p> <p>2 administration fee?</p> <p>3 A. Well, the way I understand it, it's a</p> <p>4 percentage of your sales that you pay to a GPO as a</p> <p>5 consideration for being included on their list.</p> <p>6 Q. And are there a typical range of fees that</p> <p>7 you're familiar with?</p> <p>8 A. I think a typical range would be anywhere</p> <p>9 from .25 to 3 percent.</p> <p>10 Q. Have you seen administration fees paid by</p> <p>11 BMS that exceeded 3 percent?</p> <p>12 A. I recall that the way it was explained to</p> <p>13 me, there was a maximum of 3 percent for</p> <p>14 administration fees.</p> <p>15 Q. Do you know why that was a maximum?</p> <p>16 A. I believe there's a legal maximum.</p> <p>17 Q. And you're familiar with marketing fees.</p> <p>18 A. Uh-huh.</p> <p>19 Q. What is a marketing fee?</p> <p>20 A. It's a fee for services or value that goes</p> <p>21 beyond being included on a contract or on a list of</p> <p>22 contracted products.</p>
<p style="text-align: right;">79</p> <p>1 Q. Are you familiar with rebates —</p> <p>2 A. Yes.</p> <p>3 Q. — okay, and administration fees —</p> <p>4 A. Yes.</p> <p>5 Q. — and marketing fees?</p> <p>6 A. Yes.</p> <p>7 Q. And BMS offered all of these to its</p> <p>8 customers, correct?</p> <p>9 A. Yeah.</p> <p>10 Q. And rebates, what's your familiarity with</p> <p>11 rebating?</p> <p>12 A. Well, unlike a discount, a rebate is</p> <p>13 typically not applied at the time of purchase but</p> <p>14 at some later point in time. And typically, it's</p> <p>15 tied to certain criteria, certain performance</p> <p>16 criteria of the contract.</p> <p>17 Q. Usually volume?</p> <p>18 A. Volume, growth, market share.</p> <p>19 Q. And the contracts with which you had</p> <p>20 involvement, were rebates sometimes included in the</p> <p>21 provisions?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">81</p> <p>1 Q. Can you think of an example of a service?</p> <p>2 A. Yes. We discussed with Novation a private</p> <p>3 label arrangement whereby we would be allowed to</p> <p>4 manufacture and supply Novation with our drugs</p> <p>5 under their brand name, under the Nova Plus brand,</p> <p>6 and we would pay a marketing fee in exchange for</p> <p>7 the exclusive right to be allowed to use that brand</p> <p>8 name.</p> <p>9 Q. And what drugs did BMS sell under this</p> <p>10 Nova Plus arrangement?</p> <p>11 A. Depends on the period of time that you're</p> <p>12 looking at. Before I came on board, there had been</p> <p>13 a very comprehensive Nova Plus arrangement between</p> <p>14 BMS and Novation, which covered, I think, almost</p> <p>15 all of our brands that had generic competition, and</p> <p>16 then something happened in the relationship between</p> <p>17 BMS and Novation where that was discontinued, and</p> <p>18 then we reapproached the opportunity to include our</p> <p>19 brand on Nova Plus with Novation under my</p> <p>20 leadership in 2004, maybe 2003, 2004.</p> <p>21 Q. Okay. And do you have any recollection of</p> <p>22 what a typical marketing fee was?</p>

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<p style="text-align: right;">82</p> <p>1 A. From some documents that we reviewed 2 yesterday that refreshed my memory. — 3 Q. Yeah. 4 A. — I remember seeing 8 percent. 5 Q. I may have one in this stack. 6 A. Yeah. 7 Q. I've got a bunch of contracts I pulled. 8 A. Yeah. 9 Q. And if I see one, I'll ask you about it. 10 A. Okay. 11 Q. Okay. So, contract prices, rebates, 12 administration fees, and marketing fees. They 13 would be reflected — and all those would be 14 reflected in a contract, right? 15 A. Yes. 16 Q. You wouldn't pay an admin fee without a 17 contract. 18 A. Correct. 19 Q. You wouldn't pay a marketing fee without a 20 contract. 21 A. Right. 22 Q. You wouldn't pay a rebate without a</p>	<p style="text-align: right;">84</p> <p>1 A. Yes, correct. 2 Q. No, they're not? 3 A. They're not reflective of list price. 4 List price stays the same. 5 Q. Okay. I wanted to talk to you about 6 specific products now. 7 A. Uh-huh. 8 Q. I'm going to ask you the same series of 9 questions for each specific drug and find out what 10 information you have. Blenoxane, that is a 11 multisource drug, correct? 12 A. Correct. 13 Q. Was it multisource for the entire time you 14 were at BMS? 15 A. Yes. 16 Q. And do you know when BMS first sold it? 17 MR. EDWARDS: Sold it? 18 Q. First sold it, period. I mean marketed 19 it. 20 MR. EDWARDS: You mean as a brand? 21 MR. MATT: Yes. 22 A. My understanding, it was in the early</p>
<p style="text-align: right;">83</p> <p>1 contract. 2 A. Right. 3 Q. And those types of discounts are not made 4 public by BMS, right? 5 A. Yeah. I think it's unusual that they 6 would be made public. 7 Q. They're not published in any compendia 8 that you're aware of? 9 A. No. I think we have an obligation to the 10 government to disclose if any of these prices are 11 below prices that we offer the government for 12 certain types of transactions. 13 Q. Okay. 14 A. So, when that's the case, obviously, we 15 have to report that. 16 Q. But beyond that one example, you're not 17 aware of any effort by BMS to make public these 18 various discounts that we were just discussing? 19 A. Correct. 20 Q. And those various discounts are not 21 reflected in the wholesale list price. That's 22 what --</p>	<p style="text-align: right;">85</p> <p>1 '80s. 2 Q. Okay. So, it's certainly before your time 3 at BMS? 4 A. Yes. 5 Q. Do you recall any specific marketing 6 programs that BMS had under your tenure for 7 Blenoxane? 8 A. No, no specific Blenoxane programs other 9 than addressing requests for price matching for 10 Blenoxane. If you call that a marketing program, 11 then that was the extent of our marketing program. 12 Q. And do you have -- you said price 13 matching, right? 14 A. Yes. 15 Q. And that's what we discussed earlier -- 16 A. Yeah. 17 Q. -- in terms of someone presenting you with 18 a price from a distributor -- 19 A. Correct. 20 Q. -- and asking BMS to match it. 21 A. Correct. 22 Q. All right. Do you have any recollections</p>

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<p style="text-align: right;">86</p> <p>1 about if there was a pricing trend with Blenoxane 2 over time while you were at BMS? 3 A. Yes, the Blenoxane price continued to -- 4 to drop. 5 Q. And was that the wholesale list price that 6 continued to drop or the contract price? 7 A. The contract price. 8 Q. The wholesale would probably stay 9 constant, right? 10 A. Correct. 11 Q. Do you know why the wholesale list price 12 reported by BMS didn't decline? 13 MR. EDWARDS: Can I have that question 14 back. I'm sorry. 15 (Question read back.) 16 MR. EDWARDS: For what? 17 MR. MATT: For Blenoxane. We're sticking 18 with Blenoxane. 19 A. I believe it's an industry standard that 20 once a drug was generic, the list price stays 21 wherever it was when it went generic and is not 22 updated.</p>	<p style="text-align: right;">88</p> <p>1 to go back to Blenoxane. Who were the competitors 2 to Blenoxane? 3 A. I don't recall who the specific 4 competitors were. 5 Q. But Blenoxane is the brand name for 6 bleomycin sulfate, right? 7 A. Yeah. 8 Q. Were there several competitors -- 9 A. Yes. 10 Q. -- you just don't recall any specific 11 names. Okay. I'll move to Cytoxan now. 12 A. Uh-huh. 13 Q. Cytoxan is the brand name for the BMS drug 14 known as cyclophosphamide? 15 A. Cyclophosphamide, correct. 16 Q. And that is a multisource drug, correct? 17 A. Well, it's a drug that lost its 18 exclusivity and became a multisource drug as 19 generic competitors entered the market. But what I 20 noticed through my tenure was that both the 21 competitors that we were facing started exiting the 22 market. They no longer had a supply of Cytoxan.</p>
<p style="text-align: right;">87</p> <p>1 Q. Do you know why that's the case? 2 A. I don't know why that's the case. 3 Q. You don't know. And then how do you know 4 it's an industry standard? Is that something just 5 based on your observation? 6 A. Yeah, based on my observation, yeah. 7 Q. Do you believe that it -- the wholesale 8 list price did not decline because BMS did not want 9 people to know the prevailing prices that it was 10 actually charging? 11 A. No, I don't think there was any major 12 thought given to it. 13 Q. Okay. So, you are not aware of any 14 discussions -- did you ever have a discussion with 15 anyone at BMS in which you discussed dropping the 16 wholesale list price for Blenoxane? 17 A. No. 18 Q. Cytoxan. Did I pronounce that correctly? 19 A. Yeah, Cytoxan. 20 Q. That's also under your responsibility -- 21 A. Right. Yeah. 22 Q. -- as director. Oh. I'm sorry. I have</p>	<p style="text-align: right;">89</p> <p>1 So, de facto, we became the sole source supplier of 2 injectable Cytoxan. 3 Q. Do you know when approximately the 4 competitors exited the market? 5 A. I think it was towards the end of 2002, 6 beginning of 2003. 7 Q. And do you know when Cytoxan lost its 8 exclusivity? 9 A. I don't recall the exact date. 10 Q. Was it a multisource when you started at 11 BMS? 12 A. Yes. 13 Q. And do you have any insight as to why the 14 competitors exited that market? 15 A. They had manufacturing issues, it's my 16 understanding. 17 Q. Is that in reference to quality problems 18 with the actual drug they were producing? 19 A. It's -- Cytoxan lyophilized -- as the name 20 implies, it's a lyophilized product, and 21 lyophilization is an unstable step in the 22 manufacturing process. And some competitors had</p>

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<p style="text-align: right;">90</p> <p>1 lyophilized Cytoxan. Others had powder Cytoxan.</p> <p>2 And my understanding is that both of those</p> <p>3 processes were not well controlled by some of our</p> <p>4 competitors. So, they decided to exit the market.</p> <p>5 Q. Okay. Do you recall any specifics</p> <p>6 regarding the wholesale list price for Cytoxan over</p> <p>7 time?</p> <p>8 A. What do you mean "over time"?</p> <p>9 Q. Did it stay -- did the wholesale list</p> <p>10 price stay constant during the time you were at</p> <p>11 BMS?</p> <p>12 A. Yes, I believe it did.</p> <p>13 Q. And the same question for contract</p> <p>14 pricing. Was there a trend for contract?</p> <p>15 A. Well, when I realized that we were de</p> <p>16 facto sole source, I tried to raise our contract</p> <p>17 prices.</p> <p>18 Q. So, did contract pricing decrease over</p> <p>19 time until you realized that Cytoxan was sole</p> <p>20 source?</p> <p>21 A. I don't recall that.</p> <p>22 Q. Okay. But at the point in time when you</p>	<p style="text-align: right;">92</p> <p>1 A. Yes.</p> <p>2 Q. And the oral formulation, do you know when</p> <p>3 it lost exclusivity?</p> <p>4 A. Don't recall.</p> <p>5 Q. Did you have any responsibility for the</p> <p>6 oral formulation?</p> <p>7 A. Yes, it was part of my portfolio.</p> <p>8 Q. Did you have a different pricing strategy</p> <p>9 for the injectable version of VePesid than you did</p> <p>10 for the oral formulation of VePesid?</p> <p>11 A. Yes, each of them had its own set of</p> <p>12 competitors.</p> <p>13 Q. And can you recall specifics about pricing</p> <p>14 over time for both forms? Let's say -- let's start</p> <p>15 with wholesale list price.</p> <p>16 A. Yeah.</p> <p>17 Q. Did it stay constant?</p> <p>18 A. Yes.</p> <p>19 Q. Okay, for both formulations?</p> <p>20 A. Yes. Ah. No, we may have taken a price</p> <p>21 increase for the tablets. This is based on the</p> <p>22 review of documents we had yesterday.</p>
<p style="text-align: right;">91</p> <p>1 realized that BMS was the sole supplier, contract</p> <p>2 prices increased, is that --</p> <p>3 A. Yes.</p> <p>4 Q. Did you have any specific marketing</p> <p>5 programs for Cytoxan when you were at BMS?</p> <p>6 A. Other than pricing and contracting, no.</p> <p>7 Q. Let's talk about VePesid next.</p> <p>8 A. Uh-huh.</p> <p>9 Q. VePesid was BMS's brand name for</p> <p>10 Etoposide, correct?</p> <p>11 A. Correct.</p> <p>12 Q. At the time you started working at BMS,</p> <p>13 was VePesid an exclusive drug?</p> <p>14 A. Yes. We had two formulations, injectable</p> <p>15 and oral. I know the injectable was heavily</p> <p>16 genericized. I don't recall whether the oral was</p> <p>17 to the same extent.</p> <p>18 Q. So, by the time you started at BMS United</p> <p>19 States --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- VePesid, the injectable version, was --</p> <p>22 had already lost its exclusivity?</p>	<p style="text-align: right;">93</p> <p>1 Q. Okay. And why would you have done that?</p> <p>2 A. I don't recall.</p> <p>3 Q. So, to your knowledge, the wholesale list</p> <p>4 price stayed constant for the injectable version?</p> <p>5 A. Correct.</p> <p>6 Q. But you may have had a wholesale list</p> <p>7 price increase at some point for the oral</p> <p>8 formulation?</p> <p>9 A. Correct.</p> <p>10 Q. Let's talk about contract prices now.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And let's focus on the injectable. Do you</p> <p>13 have an understanding if there was a trend in</p> <p>14 contract pricing for the injectable version of</p> <p>15 VePesid during the time you were marketing</p> <p>16 director?</p> <p>17 A. Yes, I remember new low prices being set</p> <p>18 by some of our competitors.</p> <p>19 Q. You would then -- then BMS would be</p> <p>20 presented with requests to --</p> <p>21 A. Correct.</p> <p>22 Q. -- lower its pricing, right?</p>

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<p style="text-align: right;">94</p> <p>1 A. Yes.</p> <p>2 Q. And did that, in fact, occur?</p> <p>3 A. With VePesid we had a problem in that the</p> <p>4 price had deteriorated very massively compared to</p> <p>5 other generic drugs. So, I recall that we weren't</p> <p>6 always willing to continue matching those low</p> <p>7 prices. It was already so low.</p> <p>8 Q. Nonetheless, was the trend still downward?</p> <p>9 A. Yeah. The trend was downward. I believe</p> <p>10 we discontinued some formulations of VePesid,</p> <p>11 because they were no longer profitable for us.</p> <p>12 Q. Do you know at what point in time that</p> <p>13 occurred?</p> <p>14 A. I don't recall that. Actually, no.</p> <p>15 Sorry. I think it was Cytosan that we</p> <p>16 discontinued. One of the two. We discontinued</p> <p>17 some of the formulations --</p> <p>18 Q. Okay.</p> <p>19 A. -- of the smaller formulations.</p> <p>20 Q. Let's talk about the oral version of</p> <p>21 VePesid.</p> <p>22 A. Uh-huh.</p>	<p style="text-align: right;">96</p> <p>1 A. Okay.</p> <p>2 Q. That's a -- Etopophos is an exclusive</p> <p>3 drug, isn't it?</p> <p>4 A. Correct.</p> <p>5 Q. And when -- was it offered -- was it sold</p> <p>6 by BMS when you first came to BMS US?</p> <p>7 A. It was.</p> <p>8 Q. It was. So, it has not lost its</p> <p>9 exclusivity, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And do you have -- do you recall any</p> <p>12 specifics about what has happened with the</p> <p>13 wholesale list price for Etopophos over the time</p> <p>14 that you were marketing director?</p> <p>15 A. I believe we took the occasional increase,</p> <p>16 but I don't specifically recall what percentage we</p> <p>17 took and when and how often.</p> <p>18 Q. What about contract pricing? When you</p> <p>19 were there did BMS offer contract pricing for</p> <p>20 Etopophos?</p> <p>21 A. We may have considered it for some</p> <p>22 accounts. It wasn't a major focus of what we did.</p>
<p style="text-align: right;">95</p> <p>1 Q. Do you have any recollection if there was</p> <p>2 a trend downward in contract prices for oral</p> <p>3 VePesid over time?</p> <p>4 A. I don't recall specifically.</p> <p>5 Q. Just don't remember?</p> <p>6 A. Don't remember. That was less --</p> <p>7 certainly less visible than the injectable. I</p> <p>8 think it was used less than the injectable.</p> <p>9 Q. And did you have any marketing programs</p> <p>10 for VePesid, either the injectable or oral</p> <p>11 formulations?</p> <p>12 A. No. Again, no specific marketing</p> <p>13 programs, other than pricing and contracting.</p> <p>14 Q. Let's talk about Etopophos.</p> <p>15 A. Uh-huh.</p> <p>16 MR. EDWARDS: Would this be a good time</p> <p>17 for a break?</p> <p>18 (Discussion off the record.)</p> <p>19 (Recess was taken.)</p> <p>20 Q. Back on the record after a break. We were</p> <p>21 talking about specific drugs, and I was going to</p> <p>22 ask you about Etopophos next.</p>	<p style="text-align: right;">97</p> <p>1 Q. And is that because it had no competition?</p> <p>2 A. It had no competition, and it wasn't a</p> <p>3 large brand. So, it wouldn't offer a lot of value</p> <p>4 to our customers from a discounting perspective.</p> <p>5 Q. What tumors does it treat?</p> <p>6 A. I believe it's primarily in hematology.</p> <p>7 Q. Is it safe to say that you didn't have any</p> <p>8 marketing programs for it while you were marketing</p> <p>9 director?</p> <p>10 A. That's correct. Sorry. Hematology and</p> <p>11 lung cancer, I think, as well.</p> <p>12 Q. VePesid, do you recall the competitors --</p> <p>13 who the competitors were of VePesid?</p> <p>14 A. To VePesid?</p> <p>15 Q. Yeah.</p> <p>16 A. VePesid had numerous generic competitors,</p> <p>17 which is part of the reason why the price had been</p> <p>18 driven down so much. I don't recall the specifics.</p> <p>19 Q. Okay. Let's talk next about Rubex. Do</p> <p>20 you know when that was first sold by BMS?</p> <p>21 A. I don't recall.</p> <p>22 Q. Was it sold by BMS when you joined BMS</p>

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<p style="text-align: right;">98</p> <p>1 oncology?</p> <p>2 A. We phased it out. We stopped</p> <p>3 manufacturing it, but there was still inventories</p> <p>4 left at wholesalers, and I guess, in our own</p> <p>5 warehouse. So, we discontinued Rubex, but it was</p> <p>6 still being sold as we depleted inventories.</p> <p>7 Q. And do you know approximately when you</p> <p>8 discontinued it?</p> <p>9 A. I don't recall exactly.</p> <p>10 Q. Was it — it was before you left BMS,</p> <p>11 though, correct?</p> <p>12 A. Yeah, I think so.</p> <p>13 Q. And at the time you were at BMS, Rubex was</p> <p>14 a multisource drug, right?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall any specifics with</p> <p>17 respect to what happened with the wholesale list</p> <p>18 price of Rubex over time while you were at BMS?</p> <p>19 A. No.</p> <p>20 Q. Do you recall that it stayed constant?</p> <p>21 A. It wasn't my focus, because it had been</p> <p>22 discontinued.</p>	<p style="text-align: right;">100</p> <p>1 A. Yes.</p> <p>2 Q. And drugs that could be considered</p> <p>3 competitive drugs to Taxol, what are they?</p> <p>4 A. Onxol, which is manufactured by Ivax, and</p> <p>5 then two or three generic versions. So, they're</p> <p>6 called paclitaxel — manufactured by Bedford,</p> <p>7 Mylan, and Abbott, if my recollection is correct.</p> <p>8 Q. We talked about Taxotere earlier.</p> <p>9 Taxotere is not the same chemical formulation as</p> <p>10 Paclitaxel, correct?</p> <p>11 A. Correct. It's Docetaxel.</p> <p>12 Q. And that also could be viewed as a</p> <p>13 competitor, I think you said?</p> <p>14 A. As I mentioned earlier, it could be seen</p> <p>15 as a therapeutic substitution for Paclitaxel.</p> <p>16 Q. So, a physician treating a certain tumor</p> <p>17 type with Taxol may also treat it with Taxotere</p> <p>18 instead of Taxol, is that what you —</p> <p>19 A. For the most part, yes.</p> <p>20 Q. Okay. The wholesale list price for Taxol</p> <p>21 remained constant over time, correct?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">99</p> <p>1 Q. Does that mean you don't have a</p> <p>2 recollection?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. What about contract pricing? Were</p> <p>5 you involved in contract negotiations involving</p> <p>6 Rubex?</p> <p>7 A. I believe we took it off our contracts</p> <p>8 because it had been discontinued.</p> <p>9 Q. And prior to taking it off contracts, do</p> <p>10 you have a recollection that the contract prices</p> <p>11 decreased over time for Rubex?</p> <p>12 A. I don't know.</p> <p>13 Q. You just don't remember?</p> <p>14 A. Don't remember.</p> <p>15 Q. Okay. Let's talk about Taxol. Taxol was</p> <p>16 an exclusive drug until 2002, correct?</p> <p>17 A. 2001.</p> <p>18 Q. And do you know approximately when in 2001</p> <p>19 it lost its exclusivity?</p> <p>20 A. I don't recall the exact date.</p> <p>21 Q. And Taxol was sold by BMS when you joined</p> <p>22 oncology, correct?</p>	<p style="text-align: right;">101</p> <p>1 Q. However, after its loss of exclusivity,</p> <p>2 the contract prices decreased, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And over time they decreased</p> <p>5 substantially, right?</p> <p>6 A. Yes.</p> <p>7 Q. And while you were at BMS, there were a</p> <p>8 number of marketing programs related to Taxol,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Are you familiar with the Taxol</p> <p>12 opportunity program?</p> <p>13 A. Yes.</p> <p>14 Q. Could you describe that for me in your own</p> <p>15 words.</p> <p>16 A. It was a program executed by OTN whereby</p> <p>17 customers were classified into different segments</p> <p>18 and each segment had a different value proposition.</p> <p>19 Q. And there were three segments, right?</p> <p>20 A. Yes, and we called them buckets.</p> <p>21 Q. Okay. Was Bucket 1 referred to at one</p> <p>22 point in time as the Taxol preferred brand program?</p>

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<p style="text-align: right;">122</p> <p>1 referring to here.</p> <p>2 Q. Okay. Could you please turn to Page 740.</p> <p>3 This is a graphic representation of your marketing</p> <p>4 team, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And do you know about what point in time</p> <p>7 this was?</p> <p>8 A. This was in early 2003.</p> <p>9 Q. And to whom was this presentation being</p> <p>10 made?</p> <p>11 A. This was a POA presentation to our sales</p> <p>12 force.</p> <p>13 Q. Okay. No further questions on that</p> <p>14 document. Thank you. There's one more document</p> <p>15 remaining in your stack that we did not discuss,</p> <p>16 and that is Exhibit Marre 007.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Which is a Power Point titled "Scenarios</p> <p>19 Leading Up to Generic Carboplatin Introduction."</p> <p>20 Bates Nos. 01123925 to 956. Is this a document</p> <p>21 that you recognize?</p> <p>22 A. No.</p>	<p style="text-align: right;">124</p> <p>1 whether this grid itself was implemented?</p> <p>2 A. I'm not sure.</p> <p>3 Q. This looks somewhat similar to an earlier</p> <p>4 grid that we saw associated with, I think, the</p> <p>5 Paraplatin-Taxol earned —</p> <p>6 A. It does.</p> <p>7 Q. — discount. Okay. Do you think the</p> <p>8 program was ultimately called the earned discount</p> <p>9 program or the loyalty program?</p> <p>10 A. As I said, I'm not sure this program</p> <p>11 actually got implemented.</p> <p>12 Q. Okay. Is — I'm trying to alleviate some</p> <p>13 confusion in my mind with nomenclature. We have</p> <p>14 the earned discount program out there that we</p> <p>15 discussed, and then we have this loyalty program</p> <p>16 here set forth in Exhibit Marre 007. The earned discount</p> <p>17 program was implemented, correct?</p> <p>18 A. That seems to be the case based on this —</p> <p>19 the notes from the sales conference call.</p> <p>20 Q. Okay. Do you think that perhaps what's</p> <p>21 depicted on Exhibit Marre 007 may have been an early draft</p> <p>22 of that program?</p>
<p style="text-align: right;">123</p> <p>1 Q. The lower right-hand corner, each slide</p> <p>2 has "OTN." Do you believe this could have been</p> <p>3 prepared, I assume, at OTN?</p> <p>4 A. Probably.</p> <p>5 Q. Okay. And is this the type of document</p> <p>6 that you would receive in the ordinary course of</p> <p>7 your responsibilities at BMS?</p> <p>8 A. I could have.</p> <p>9 Q. I can represent — at least it's been</p> <p>10 represented to me — that this did come from your</p> <p>11 files.</p> <p>12 A. Sure.</p> <p>13 Q. Page 934 describes Paraplatin/Taxol</p> <p>14 loyalty program, and I was wondering if this</p> <p>15 program was implemented?</p> <p>16 A. (Witness reviews document.) I don't</p> <p>17 recall whether we did go ahead with this</p> <p>18 two-dimensional rebate grid or not.</p> <p>19 Q. Are you — okay. You're referring to Page</p> <p>20 940, is that correct?</p> <p>21 A. 938.</p> <p>22 Q. Okay. Look at 940. So, you're not sure</p>	<p style="text-align: right;">125</p> <p>1 A. Yeah, I believe that this was too complex</p> <p>2 — the first version that we saw had this grid with</p> <p>3 40 different fields or something. This had fewer</p> <p>4 fields, but it was still deemed too complicated.</p> <p>5 Q. Okay. Thanks for clarifying that for me.</p> <p>6 On Page 954 it discusses private label option for</p> <p>7 Paraplatin.</p> <p>8 A. Uh-huh.</p> <p>9 Q. And I've seen some reference to that in</p> <p>10 some of the documents. Can you discuss what that</p> <p>11 is all about.</p> <p>12 A. As part of our Paraplatin generic defense</p> <p>13 strategy, we evaluated whether it would make sense</p> <p>14 to allow OTN to sell both branded Paraplatin and a</p> <p>15 nonbranded Paraplatin. But we wanted the</p> <p>16 nonbranded Paraplatin to be a BMS product rather</p> <p>17 than product manufactured by a generic competitor</p> <p>18 so that we would still benefit from getting the</p> <p>19 entire OTN business. So, that was the essence of</p> <p>20 the private label program.</p> <p>21 Q. So, the — Paraplatin lost its exclusivity</p> <p>22 when?</p>

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<p style="text-align: right;">126</p> <p>1 A. I believe it was November of 2004, late 2 2004. 3 Q. Up until that time – strike that. During 4 your tenure at BMS, the wholesale list price for 5 Paraplatin, do you recall whether it remained 6 constant? 7 A. No, we took price increases. 8 Q. So, the wholesale list price increased 9 over time. Did that – did the increases in 10 wholesale list price continue after the loss of 11 exclusivity? 12 A. I don't recall. I wasn't with BMS at that 13 time. 14 Q. Okay. So, you had left. That's right. 15 And prior to your departure, did BMS offer contract 16 pricing discounts on Paraplatin? 17 A. Yes. 18 Q. And were they associated with the various 19 programs that we just discussed? 20 A. Correct. 21 Q. And you were responsible for putting 22 together the generic strategy, so-to-speak, for</p>	<p style="text-align: right;">128</p> <p>1 Q. Okay. And what was the pricing strategy 2 associated with the private label? 3 A. The strategy was for the private label to 4 be a fast follower. So, we understood that the 5 generics would drive the price down and that we 6 needed to be competitive in order not to lose 7 business, and that the private label would not 8 leave but it would follow the price set by the 9 generics. 10 Q. And "following" meaning if the generics 11 were lower in price, the private label price would 12 be lowered by BMS? 13 A. Correct. 14 Q. And what was the name of the private label 15 product? 16 A. OTN Paraplatin. 17 Q. So, OTN was the brand? 18 A. Yeah, I'm not sure what it finally ended 19 up being, because it was launched after I left the 20 company. 21 Q. And then under the strategy before you 22 left, what was the strategy with respect to the</p>
<p style="text-align: right;">127</p> <p>1 Paraplatin when it lost exclusivity, right? 2 A. Yeah, in association with OTN. 3 Q. Okay. I'm sorry. Did I ask you whether 4 you prepared Exhibit Marre 007? 5 A. I don't know whether you asked me, but I 6 can tell you I didn't. 7 Q. Okay. You did prepare it? 8 A. I did not prepare this. 9 Q. You did not prepare it. So, maybe it 10 would be best for me just to ask you what was – 11 what were the plans – what were BMS's plans for 12 Paraplatin to deal with the loss of exclusivity on 13 that drug? 14 A. The plan was to start thinking about how 15 to defend our market share well ahead of the loss 16 of exclusivity. So, to take advantage of the fact 17 that we were the incumbent and secure business that 18 would make it more difficult for the entrants to 19 take market share away from us. 20 Q. Okay. And so, part of the plan was to 21 create a private label. 22 A. That was part of the plan.</p>	<p style="text-align: right;">129</p> <p>1 price of Paraplatin, the branded BMS drug? 2 A. The idea was for the branded Paraplatin 3 through OTN to maintain a price premium over both 4 the generics and our private label. 5 Q. And do you know what happened to that 6 price over time? 7 A. No. 8 Q. Because you – 9 A. I left the company. 10 Q. You were gone, okay. So, you wouldn't 11 have any insights into volume of sales of 12 Paraplatin post loss of exclusivity? 13 A. No. 14 Q. And the same question for the OTN private 15 label Paraplatin. 16 A. No. 17 (BMS/AWP 01123962-974 marked Exhibit Marre 014.) 18 Q. The court reporter has marked as Exhibit Marre 014 19 an e-mail to yourself and others from Mayank Patel, and it 20 has an attachment. The exhibit itself has Bates Nos. 01123962 21 to 74. Do you believe that this is an e-mail that you received 22 in the ordinary course of your responsibilities at BMS?</p>

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<p style="text-align: right;">130</p> <p>1 A. Yes.</p> <p>2 Q. And the VePesid injection analysis that's</p> <p>3 attached, I draw your attention to the first page</p> <p>4 of that analysis where it says, "2002 sales." The</p> <p>5 gross sales exceed 45 million, correct?</p> <p>6 A. That's what it says here.</p> <p>7 Q. And where it says, "Prime vendors accrual</p> <p>8 of 35,395,541," do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does that indicate that most of BMS's</p> <p>11 sales of VePesid were made at contract pricing at</p> <p>12 this time, in 2002?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I wanted to make sure I was reading</p> <p>15 that right. So, if we took the difference between</p> <p>16 the gross sales and the prime vendor accrual, we</p> <p>17 would determine the sales of VePesid that BMS made</p> <p>18 that were made without contracts, correct?</p> <p>19 A. Not quite. I don't think this analysis</p> <p>20 would allow you to determine how big our sales</p> <p>21 volume without contracts was --</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">132</p> <p>1 involvement in that, right?</p> <p>2 A. Yes.</p> <p>3 MR. MATT: Let's mark an exhibit.</p> <p>4 (BMS/AWP 388534-536 marked Exhibit Marre 015.)</p> <p>5 Q. Exhibit Marre 015 is an e-mail from Fred Wiseman</p> <p>6 to yourself --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- dated November 14th. My only question</p> <p>9 on this is whether it is an e-mail that you</p> <p>10 received in the ordinary course of your</p> <p>11 responsibilities?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Thank you. Do most major hospitals</p> <p>14 belong to GPOs?</p> <p>15 A. I'm sorry.</p> <p>16 Q. Do most major hospitals belong to GPOs?</p> <p>17 A. Yes.</p> <p>18 Q. What are the major hospital GPOs?</p> <p>19 A. The two leading ones are Premier and</p> <p>20 Novation. Between them they have about 70 percent</p> <p>21 of the market.</p> <p>22 Q. Did you say 70 percent?</p>
<p style="text-align: right;">131</p> <p>1 A. -- 'cause this is averaging everything.</p> <p>2 Q. But is it reliable to indicate the volume</p> <p>3 of sales made at contracts?</p> <p>4 A. Well, you would have to consider also the</p> <p>5 OTN charge-backs, in addition to the prime vendor</p> <p>6 accrual.</p> <p>7 Q. Oh. Okay. So, the sales reflected here</p> <p>8 that were made under contracts were the sales</p> <p>9 reflected under the prime vendor accrual line and</p> <p>10 the sales reflected under OTN charge-backs,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. That's the only question I have</p> <p>14 about that one. Part of your marketing strategies</p> <p>15 targeted state society GPOs, right?</p> <p>16 A. More than my marketing strategy, that was</p> <p>17 the OTN marketing strategy.</p> <p>18 Q. Did BMS try to sign contracts with GPOs</p> <p>19 that were state societies?</p> <p>20 A. I believe the contracts were actually</p> <p>21 signed by OTN.</p> <p>22 Q. Okay. But you would have had some</p>	<p style="text-align: right;">133</p> <p>1 A. 70.</p> <p>2 Q. And did BMS have contracts with Premier</p> <p>3 and Novation for oncology drugs --</p> <p>4 A. Yes.</p> <p>5 Q. -- during the time you were there? Is</p> <p>6 Consorta a hospital GPO?</p> <p>7 A. Yes.</p> <p>8 Q. And Cardinal-Owen, Cardinal-Owen?</p> <p>9 A. Yes.</p> <p>10 Q. And what about Broadlane?</p> <p>11 A. Yes.</p> <p>12 Q. MedAssets?</p> <p>13 A. Yes.</p> <p>14 Q. I'm actually reading some of these names</p> <p>15 off of a Power Point that we'll mark.</p> <p>16 (BMS/AWP 1124381-394 marked Exhibit Marre 016.)</p> <p>17 Q. The court reporter has marked as Exhibit Marre 016,</p> <p>18 a Power Point that says, "GPO Channel." I</p> <p>19 believe this was produced from your files, and I</p> <p>20 guess my question is, is this something that you</p> <p>21 would have received in the ordinary course of your</p> <p>22 responsibilities at BMS?</p>

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<p style="text-align: right;">142</p> <p>1 Q. Yeah. That's kind of an awkward question.</p> <p>2 What I'm trying to figure out is did the templates</p> <p>3 themselves usually become the final contracts?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Thanks.</p> <p>6 (BMS AWP 1124203-204 marked Exhibit Marre 022.)</p> <p>7 Q. Exhibit Marre 022 is an e-mail from Mayank Patel</p> <p>8 to yourself and others, dated April 2, 2003. Is</p> <p>9 this an e-mail that you received in the ordinary</p> <p>10 course of your responsibilities?</p> <p>11 A. Yes.</p> <p>12 Q. And I draw your attention to the second</p> <p>13 page. It's a comparison of pricing offer to OTN</p> <p>14 and OS, correct?</p> <p>15 A. Yes.</p> <p>16 Q. There's a line that says, "Off invoice."</p> <p>17 What does that refer to?</p> <p>18 A. It's an off-invoice discount. So, it's a</p> <p>19 discount that's in the invoice.</p> <p>20 Q. Does that mean it was sold under a</p> <p>21 contract?</p> <p>22 A. Yeah, and the discount is reflected in the</p>	<p style="text-align: right;">144</p> <p>1 It's dated December 19th, 2002. Is this an e-mail</p> <p>2 that you created in the ordinary course of your</p> <p>3 responsibilities?</p> <p>4 A. Yes.</p> <p>5 Q. On the very last page of this exhibit</p> <p>6 there is a spreadsheet that reflects Duke contract</p> <p>7 pricing --</p> <p>8 A. Okay.</p> <p>9 Q. -- and the percentage off WLPs, do you</p> <p>10 believe that these were accurate at the time?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And I notice the Blenoxane is a 71</p> <p>13 percent discount. VePesid is a 94 percent</p> <p>14 discount --</p> <p>15 A. Yes.</p> <p>16 Q. -- and -- 95 percent.</p> <p>17 A. Yes.</p> <p>18 Q. Why were the discounts so high?</p> <p>19 A. It's driven by the competitive</p> <p>20 environment. We had multiple competitors for</p> <p>21 VePesid.</p> <p>22 Q. Is the same true for Taxol at this point</p>
<p style="text-align: right;">143</p> <p>1 sales price.</p> <p>2 Q. Okay. And then the line that says, "Cash</p> <p>3 discount to wholesaler 2 percent for OTN," is that</p> <p>4 a prompt pay discount?</p> <p>5 A. I believe so.</p> <p>6 Q. And then the "Cash discount OTN end</p> <p>7 customer, 2 percent," do you know what that</p> <p>8 discount is associated with?</p> <p>9 A. Whenever somebody sells a product to a</p> <p>10 buyer, they tend to offer a discount for prompt</p> <p>11 payment. So, this would be the discount that OTN</p> <p>12 offers for prompt payment its end customers.</p> <p>13 Q. Oh, okay. And then what is a Taxol volume</p> <p>14 purchase rebate at 1.6 percent to OTN? What is</p> <p>15 that?</p> <p>16 A. This reflects the -- I don't recall.</p> <p>17 Q. You don't recall what that one is?</p> <p>18 A. No.</p> <p>19 (BMS/AWP 217841-851 Marked Exhibit Marre 023.)</p> <p>20 Q. Let's go to the next document, which is</p> <p>21 Exhibit Marre 023 to your deposition. It's an e-mail from</p> <p>22 yourself to Michelle Barnard with attachments.</p>	<p style="text-align: right;">145</p> <p>1 in time as reflected in the 75 percent discounts?</p> <p>2 A. Is what true?</p> <p>3 Q. Were there also -- the competitive</p> <p>4 environment true of those discounts, correct?</p> <p>5 A. Yes, yes.</p> <p>6 Q. And was Duke a large purchaser?</p> <p>7 A. Yes.</p> <p>8 Q. Exhibit Marre 024 is a spreadsheet that says,</p> <p>9 "Blenoxane contract sales, 3rd quarter and 4th</p> <p>10 quarter of 2002," Bates Nos. 000212669 to 74. Have</p> <p>11 you seen this document before?</p> <p>12 (BMS/AWP 212669-674 marked Exhibit Marre 024.)</p> <p>13 A. I don't specifically recall seeing this.</p> <p>14 Q. Have you seen a format like this before?</p> <p>15 A. Yes.</p> <p>16 Q. And is this a document that you reviewed</p> <p>17 in the ordinary course of your responsibilities at</p> <p>18 BMS?</p> <p>19 A. Yes.</p> <p>20 Q. And what would be the purpose of your</p> <p>21 review?</p> <p>22 A. Well, in this case, Blenoxane was supplied</p>

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<p style="text-align: right;">146</p> <p>1 to us by a Japanese company. And the price we paid</p> <p>2 to the Japanese manufacturer was based on a formula</p> <p>3 that reflected our own average selling price. So,</p> <p>4 we needed to show them how our price had evolved to</p> <p>5 justify what we were paying them. So, that's why</p> <p>6 we did this analysis.</p> <p>7 Q. Okay. So, the discounts off wholesale</p> <p>8 list price that are reflected in this spreadsheet,</p> <p>9 to the best of your knowledge, were accurate?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And do these represent all contract</p> <p>12 sales for Blenoxane for the time period?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay.</p> <p>15 MR. EDWARDS: All contract sales to</p> <p>16 hospitals or — was that your question?</p> <p>17 MR. MATT: That's actually a good</p> <p>18 qualifier.</p> <p>19 MR. EDWARDS: — or all contract sales to</p> <p>20 everybody?</p> <p>21 MR. MATT: Let's first ask the question to</p> <p>22 everybody if the witness knows.</p>	<p style="text-align: right;">148</p> <p>1 that were offered?</p> <p>2 MR. EDWARDS: To?</p> <p>3 Q. To Conorta.</p> <p>4 A. (Witness reviews document.) Yes.</p> <p>5 Q. And the discounts it offered were a</p> <p>6 reflection of the competitive environment, correct?</p> <p>7 A. Correct.</p> <p>8 Q. No more questions on that one.</p> <p>9 (BMS/AWP 96291-300 marked Exhibit Marre 025.)</p> <p>10 (BMS/AWP 96333-345 marked Exhibit Marre 026.)</p> <p>11 Q. Exhibit Marre 026 is an oncology customer</p> <p>12 contract proposal to Owen Health Care?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Is that your signature on the first page?</p> <p>15 A. Can you say that again.</p> <p>16 Q. Is that your signature on the first page?</p> <p>17 A. Yeah.</p> <p>18 Q. So, the discounts off of WLP that are</p> <p>19 reflected on the second page of this document,</p> <p>20 those were, in fact, offered to Owen, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And if we review a couple of pages ahead</p>
<p style="text-align: right;">147</p> <p>1 A. This doesn't reflect OTN.</p> <p>2 Q. Okay.</p> <p>3 A. But it does reflect US oncology. So, US</p> <p>4 oncology is not a hospital.</p> <p>5 Q. Okay.</p> <p>6 A. So, I don't want to speculate about this.</p> <p>7 Q. Yeah, we don't want to you speculate</p> <p>8 either. Thanks.</p> <p>9 The next exhibit, Exhibit Marre 025 is an</p> <p>10 oncology customer contract proposal —</p> <p>11 A. Uh-huh.</p> <p>12 Q. — for Consorta, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And is this something that you would have</p> <p>15 received in the ordinary course of your</p> <p>16 responsibilities at BMS?</p> <p>17 A. Yes.</p> <p>18 Q. In fact, you signed it on Page 2, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And I just want to confirm that the</p> <p>21 discounts presented begin on the third page,</p> <p>22 discounts off of WLP. Were there the discounts</p>	<p style="text-align: right;">149</p> <p>1 to Page 336, we have a proposal to Broadlane,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. It looks like this one was not signed by</p> <p>5 you — at least this one back here. My question</p> <p>6 is, do Owen and Broadlane, are these two separate</p> <p>7 GPOs?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Thanks. Exhibit Marre 027 is an e-mail</p> <p>10 from Michelle Barnard to yourself and others. Is</p> <p>11 this something that you — it's dated March 16th,</p> <p>12 2003. Is this something that you would have</p> <p>13 received in the ordinary course of your</p> <p>14 responsibilities at BMS?</p> <p>15 A. Yes.</p> <p>16 (BMS/AWP 1124131-156 marked Exhibit Marre 027.)</p> <p>17 Q. And it looks like there was an attachment</p> <p>18 that shows discounts being offered to various GPOs,</p> <p>19 including Owen and Premier, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And Pages 138 to 140 reflect —</p> <p>22 A. Actually, where do you see Owen?</p>

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Exhibit 84

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Page 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
In Re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) CIVIL ACTION NO.
) 01-CV-12257-PBS)

-----)
THIS DOCUMENT RELATES TO)
ALL ACTIONS)
-----X

DEPOSITION OF JOHN F. AKSCIN

New York, New York

Thursday, August 11, 2005

9:53 a.m.

Reported by:

Frank J. Bas, RPR

Henderson Legal Services
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New York, NY

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1 But I think I'm going to ask the witness to
2 go back and if there's any more
3 supplemental production, we'll make it at
4 that time.

5 MR. MATT: Okay. I just want to
6 make sure that an exhaustive search was
7 done.

8 MR. TRETTER: And I understand
9 that. And we are going to make sure that
10 that's the case. I intend to ask the
11 witness to go back and in the fullness of
12 time make sure that he's done an exhaustive
13 search.

14 MR. MATT: Okay. Thank you.

15 BY MR. MATT:

16 Q. What is your present position with
17 OTN?

18 A. I am vice president of government
19 relations and managed care services for OTN.

20 Q. How long have you held that
21 position?

22 A. The government relations

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1 responsibility, about three years now. The
2 managed care services responsibility just was
3 added this past year, earlier in 2005.

4 Q. So prior to 2005 was your title vice
5 president of government relations?

6 A. Prior to 2000 -- prior to August of
7 2004 my title was director of government
8 relations.

9 Q. And when did you first attain that
10 title?

11 A. The director of government
12 relations?

13 Q. Yes.

14 A. Okay. Approximately 2000 -- late
15 2002. October 2002, approximately.

16 Q. And in approximately August 2004 the
17 title changed to vice president of government
18 relations and managed care services?

19 A. It changed to vice president of
20 government relations in 2004, and then in March
21 of 2005 they added managed care services.

22 Q. Okay. Thank you. If you could take

Page 16

1 me back through the history of your employment
2 with OTN and give me your titles and the
3 approximate time period.

4 A. Okay. I started with OTN in
5 December of 1999, in the position of director,
6 business development for office based oncology.

7 Pretty much stayed with that
8 position until the introduction of the
9 government relations role, on the date that I
10 provided you earlier.

11 Q. Okay.

12 A. Again, these dates are approximate.

13 Q. That's good enough for our purposes,
14 I think.

15 When you were director of business
16 development for office based oncology -- first
17 of all, can we abbreviate that OBO for purposes
18 of our examination?

19 A. We can.

20 Q. What were your responsibilities in
21 that position?

22 A. For the most part, my

Page 17

1 responsibilities were evaluating and developing
2 programs and services to support the success of
3 OBOs.

4 Q. Did you have anyone working for you?

5 A. I did not.

6 Q. And who did you report to?

7 A. A gentleman by the name of Brett
8 Brodowy. B-r-o-d-o-w-y.

9 Q. What was his position?

10 A. He was vice president, business
11 development.

12 Q. And where was he located?

13 A. He was located at the OTN San
14 Francisco -- South San Francisco corporate
15 office.

16 Q. Can you give us a flavor -- when you
17 say evaluating and developing programs and
18 services to support success of OBOs, could you
19 give us a flavor for what your daily work life
20 was like in that position?

21 A. I worked in developing a
22 relationship with outside consultants to provide

5 (Pages 14 to 17)

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1 in-depth consulting services to our customers.
2 I worked on evaluating new
3 technologies for work simplification for our
4 customers.

5 And then also worked on developing
6 customer communication programs.

7 Q. Does that mean you were involved in
8 marketing, the preparation of marketing
9 materials?

10 A. I worked very closely with marketing
11 and the sales team.

12 Q. The outside consultants that you
13 referenced, can you list those for me, please?

14 A. One was known at the time as
15 KR Johnson & Associates. And the second
16 organization was an organization at the time
17 known as ProStat, P-r-o-S-t-a-t, Resources.

18 Q. Just those two?

19 A. Just those two, primarily.

20 Q. KR Johnson & Associates, has that
21 name changed?

22 A. It is now called Practice Expert.

Page 19

1 Q. I've seen a reference to KR Johnson
2 before. What did they do for OTN?

3 A. Basically there was a relationship
4 that was twofold. One was they provided
5 consulting services directly to OTN as a
6 company. The second role was for them to be a
7 resource to our office based oncology customers
8 for consulting regarding general business
9 matters in the OBO environment.

10 Q. Let's break those down. The
11 consulting services to OTN, what kind of
12 consulting services did KRJ provide?

13 A. For the most part, they were
14 training services for OTN employees.

15 Q. What kind of training?

16 A. Focused largely at the business of
17 office based oncology, how office based oncology
18 operates. And the intent was to just provide
19 general knowledge to the OTN employees of what
20 our customers were like.

21 Q. What were some of the topics then
22 that would be captured under the general

Page 20

1 description of how a business — how an OBO
2 operates?

3 A. Generally speaking, the topics
4 included staffing. Included clinical issues.
5 Included billing and reimbursement for services.

6 Q. And would KRJ train OTN outside
7 salespeople?

8 A. At times.

9 Q. What about inside salespeople?

10 A. At times.

11 Q. Any other OTN employees?

12 A. It was mostly focused on inside and
13 outside sales and some of the marketing folks.

14 Q. And where are they located, KRJ?

15 A. The KRJ Practice Expert location is
16 in Coeur D'Alene, Idaho. That is a satellite
17 office, if you will, of Practice Expert.

18 Q. Is that where KRJ was located?

19 A. That's where KRJ was located until
20 they were acquired by Practice Expert.

21 Q. And where is the home office of
22 Practice Expert, if you know?

Page 21

1 A. I do not know exactly.

2 Q. Do you have a primary contact there?

3 A. At KRJ?

4 Q. Yes.

5 A. I do.

6 Q. And who is that?

7 A. Kim, that's K-i-m. The last name is
8 Ransier, R-a-n-s-i-e-r.

9 Q. Was Kim always your contact?

10 A. For the most part. She was
11 president of KRJ at the time KRJ was
12 independent.

13 Q. Is it a coincidence that her
14 initials are KR?

15 A. Actually KRJ.

16 Q. You also mentioned that OTN made KRJ
17 available to its customers. Correct?

18 A. That is correct.

19 Q. Under what terms?

20 A. The terms of those consulting
21 relationships were a business transaction
22 between the customer and KR Johnson. What I did

(Pages 18 to 21)

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1 in my role at OTN was basically evaluate the
2 customer's need on a very high level on the
3 front end and then make the determination as to
4 what level of consulting advice and guidance the
5 customer needed, and then I would inform the
6 customer and KRJ that they should talk to each
7 other. That was the extent of the relationship.

8 Q. So it was a referral basically?

9 A. Referral based.

10 Q. OTN didn't compensate KRJ for
11 working with OTN clients?

12 A. Account agreement between KR Johnson
13 and OTN was that KR Johnson had a discounted fee
14 to OTN customers, but there was no cash involved
15 with the transactions.

16 Q. In your experience how many
17 people -- how many OBOs have you referred to
18 KRJ?

19 A. I could not answer that off the top
20 of my head.

21 Q. Is it a substantial amount?

22 MR. TRETTER: Objection to the form.

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1 physicians staff their practice; setting up the
2 business operations of the practice; setting up
3 the clinical side of the practice; and setting
4 up the billing and reimbursement component for
5 the practice.

6 Q. Did KRJ provide billing
7 reimbursement software to customers; do you
8 know?

9 A. To my knowledge they had an offering
10 in that area.

11 Q. Do you know whether that software
12 referenced average wholesale price at all?

13 A. I do not know that.

14 Q. Do you know if KRJ ever provided
15 consulting on AWP issues?

16 A. To my --

17 Q. To OBO clients?

18 MR. TRETTER: AWP issues?

19 MR. MATT: Yes. Any issues relating
20 to average wholesale price.

21 MR. TRETTER: Objection to the form.

22 BY MR. MATT:

Page 23

1 BY MR. MATT:

2 Q. I don't know how else to get an
3 estimate from you. I don't want you to guess.

4 A. No, I understand that.

5 Q. How often -- maybe that's a better
6 question. How often would you refer OBO
7 customers?

8 A. It varied. It really varied. It
9 depended on what the issues were. I would say
10 that for the most part the majority of referrals
11 were for physicians wanting to start a new
12 practice.

13 Q. Do you know the topics -- are you
14 familiar with the services that KRJ provided for
15 the customers that you referred to them?

16 A. Somewhat.

17 Q. And what's the nature of those
18 services?

19 A. In the case of starting up a
20 physician new in practice, they encompassed
21 basically everything from helping the physician
22 find the location for the practice; helping the

Page 25

1 Q. I'm going to let the question stand
2 unless you want me to clarify anything,
3 Mr. Akscin.

4 A. I think that AWP issues is rather
5 broad, and I would like you to clarify.

6 Q. Do you know whether KRJ provided any
7 consulting relating to how practices are
8 reimbursed, based on AWP, under Medicare?

9 A. Not specifically. Not being an
10 integral part of KRJ, I am uncertain as to
11 exactly what information they provided their
12 clients.

13 Q. But you did testify earlier that
14 they did consult on billing reimbursement
15 issues?

16 A. Yes, they did. That was part of
17 their array of services.

18 Q. Is KRJ, to your knowledge, familiar
19 with the reimbursement practices of private
20 insurers?

21 A. Again, not being closely related to
22 their business operations, I couldn't -- I

7 (Pages 22 to 25)

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1 couldn't specifically state that.
 2 Q. Okay. What about -- taking you back
 3 to your testimony about KRJ providing training
 4 to OTN employees.
 5 A. Mm-hmm.
 6 Q. In the course of that training, was
 7 AWP ever discussed?
 8 A. I believe so.
 9 Q. And in what context?
 10 A. In the context of very high level of
 11 how office based oncology practices are
 12 reimbursed in their environment.
 13 Q. Until recently oncology based
 14 practices reimbursed under Medicare based on an
 15 AWP benchmark, correct?
 16 A. To my knowledge, that's correct.
 17 Q. And that was 95 percent of AWP,
 18 right?
 19 A. As the history developed, yes, at
 20 one time.
 21 Q. And many insurers reimburse for
 22 chemotherapy drugs based on AWP; is that

Page 27

1 correct?
 2 A. I would say a number of them do.
 3 Q. When you say a number, can you
 4 quantify that, in terms of majority or minority?
 5 A. I would say a majority of private
 6 payers, outside the Medicare system.
 7 Q. And has that been your observation
 8 since you worked at OTN?
 9 A. Yes.
 10 Q. You also mentioned consultants named
 11 ProStat Resources?
 12 A. Correct.
 13 Q. Is that spelled P-r-o-s-t-a-t?
 14 A. Correct.
 15 Q. And where are they located?
 16 A. Kansas City, Missouri.
 17 Q. Have they always been there?
 18 A. To my knowledge.
 19 Q. And what is the nature, if any, of
 20 the consulting relationship between OTN and
 21 ProStat?
 22 A. There's no formal relationship.

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1 Q. Does ProStat offer consulting
 2 services to OTN?
 3 A. Under a formal relationship, they do
 4 not.
 5 Q. When you qualify it with "formal" --
 6 A. Mm-hmm.
 7 Q. -- what about informal?
 8 A. Informally, yes.
 9 Q. Can you please describe the nature
 10 of the consulting?
 11 A. Again from a very, very high level
 12 relationship, general support in the area of
 13 reimbursement assistance services to our
 14 customer community.
 15 MR. TRETTER: I think the question
 16 was whether they provide any consulting
 17 services to OTN as a corporate entity. Not
 18 to the customer.
 19 A. Okay. Again, informally --
 20 formally they do not, to OTN. And informally,
 21 high-level services, as I described.
 22 Q. So let me make sure I understand

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1 your testimony on this topic.
 2 Has OTN engaged ProStat to consult
 3 with OTN on specific projects?
 4 A. No, they have not. To my knowledge
 5 they have not.
 6 Q. So is this a referral relationship,
 7 then, that OTN will from time to time refer OBO
 8 customers to ProStat for consulting purposes?
 9 A. On occasion.
 10 Q. And how often does that occur?
 11 A. Infrequently.
 12 Q. And is there a financial
 13 relationship between ProStat and OTN, to your
 14 knowledge?
 15 A. There is not, that I know of.
 16 Q. And can you recall some specific
 17 instances in which OTN has referred customers to
 18 ProStat?
 19 A. No, I cannot.
 20 Q. Have you personally referred anyone
 21 to ProStat?
 22 A. I have.

(Pages 26 to 29)

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1 Q. And who was that?
 2 A. Various practices over the years.
 3 Q. And for what purposes?
 4 A. For evaluation of new services.
 5 Q. Does ProStat do something
 6 differently than KRJ?
 7 A. I wouldn't classify it as
 8 differently. They work at a different level
 9 than KRJ does, at a higher, broader level than
 10 KRJ does.
 11 Q. Okay. Could you be more specific,
 12 then, in how they differ?
 13 A. KRJ is more involved in day-to-day's
 14 operational management of their client practices
 15 and day-to-day billing and reimbursement issues.
 16 ProStat tends to focus, as I just
 17 tried to explain, on a broader concept of
 18 program development; new service development
 19 within office based oncology practices. ProStat
 20 does not do any billing or collections. They
 21 don't operate practices on a contractual basis.
 22 Things like that.

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1 MR. TRETTER: Can I help? Does
 2 ProStat do the ProCert program? Is that
 3 theirs?
 4 THE WITNESS: I am aware of a
 5 program known as ProStat -- ProCert.
 6 MR. TRETTER: Okay.
 7 THE WITNESS: And ProCert is
 8 managed, if you will, by ProStat.
 9 MR. TRETTER: So does that give you
 10 an idea, John?
 11 BY MR. MATT:
 12 Q. ProCert is a reimbursement
 13 assistance program?
 14 A. It's a reimbursement assistance
 15 program. That is correct.
 16 Q. And that's offered through OTN
 17 through its customers?
 18 A. That I am not certain of. I don't
 19 believe it's offered through OTN.
 20 MR. TRETTER: I think that's BMS.
 21 A. It's offered through BMS, I believe.
 22 Q. Okay. I want to come back to that.

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1 When you referenced just recently in
 2 your testimony ProStat, they have a high-level
 3 approach, and looks at new services, could you
 4 give an example of new services?
 5 A. An example of new services would be
 6 things like diagnostic imaging. Retail
 7 pharmacy. Joint venture services with hospital
 8 organizations.
 9 Q. Do you believe that ProStat, in its
 10 consulting capacity, would deal with issues
 11 relating specifically to average wholesale price
 12 in reimbursement?
 13 A. To the extent of their reimbursement
 14 assistance program? I would think possibly.
 15 Q. And the reimbursement assistance
 16 program, I think you testified, is called the
 17 ProCert program; is that correct?
 18 A. That's my understanding.
 19 MR. TRETTER: That's one program.
 20 BY MR. MATT:
 21 Q. That's one program?
 22 A. One program.

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1 Q. And are there others that you're
 2 aware of?
 3 A. To my knowledge at this point in
 4 time, there aren't others.
 5 Q. And can you just describe what you
 6 know about ProCert?
 7 A. ProCert was a program in which, when
 8 office based oncology practices received a
 9 denial from an insurer for the services and
 10 drugs provided to treat that patient, they would
 11 contact ProCert for assistance in managing that
 12 claim denial.
 13 Q. And how would they provide
 14 assistance, if you know?
 15 A. You know, I'm not that certain. I'm
 16 not that certain on that. I was not integrally
 17 involved with that program.
 18 Q. And was this something that was
 19 offered through OTN to OTN's customers?
 20 A. No, it was offered by BMS.
 21 Q. Do you know the terms under which
 22 that program was offered? In other words, did

9 (Pages 30 to 33)

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1 BMS pay for it?
 2 A. I am not privy to any contractual
 3 relationships between the two companies.
 4 Q. When an OBO receives a denial of a
 5 reimbursement, does ProCert take the claim over
 6 itself and see if it can get it reimbursed, or
 7 does, in the alternative, ProCert offer advice
 8 to the client on how --
 9 MR. TRETTER: Let me just get an
 10 objection to the form.
 11 BY MR. MATT:
 12 Q. Do you understand the question?
 13 A. I understand the question, but I do
 14 not know. I don't have direct relationship with
 15 the program.
 16 Q. I have seen a reference to a firm
 17 called DocuMedix?
 18 A. Correct.
 19 Q. Does that sound familiar?
 20 A. Mm-hmm.
 21 Q. Is that another consultant that OTN
 22 has worked with in the past?

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1 A. In the past, that is correct.
 2 Q. And in what capacity?
 3 A. There was a time when OTN had a
 4 relationship with DocuMedix to provide
 5 reimbursement assistance information.
 6 Q. Was that to OTN's customers?
 7 A. To OBO customers. And that was in a
 8 hot line format.
 9 Q. In other words, like a customer
 10 would call the hot line --
 11 A. Would call.
 12 Q. -- and a DocuMedix employee would
 13 answer?
 14 A. That is correct.
 15 Q. Did OTN have a financial
 16 relationship with DocuMedix?
 17 A. We did.
 18 Q. And what was the nature of that
 19 relationship?
 20 A. The relationship financial between
 21 OTN and DocuMedix at that time was that OTN
 22 essentially underwrote those services or paid

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1 for those services.
 2 Q. And how long did DocuMedix run a
 3 reimbursement hot line for OTN customers?
 4 A. I think we exited the relationship
 5 sometime in 2003. The program was in existence
 6 when I started with OTN back in 1999.
 7 Q. Where is DocuMedix located?
 8 A. DocuMedix no longer exists.
 9 Q. Was it purchased by some other
 10 company?
 11 A. It was bought.
 12 Q. And who was it bought by?
 13 A. It was bought out by the Lash Group.
 14 Q. And who was your contact at
 15 DocuMedix?
 16 A. Roberta Buell. B-u-e-l-l.
 17 Q. I'm sorry. B-u --
 18 A. B-u-e-l-l.
 19 Q. And was she always your primary
 20 contact there?
 21 A. For the most part.
 22 Q. And do you know when the Lash Group

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1 purchased DocuMedix?
 2 A. I'm uncertain of that date.
 3 Q. Was it before 2003?
 4 A. No, it was after 2003.
 5 Q. So the program was always referred
 6 to as DocuMedix during the time period that OTN
 7 offered that?
 8 A. That is correct.
 9 Q. You said broadly reimbursement
 10 assistance. What does that mean?
 11 A. This was support through a hot line
 12 program that for the most part answered customer
 13 questions regarding which specific billing codes
 14 to use not only on drugs but on services; which
 15 specific disease classification codes to use;
 16 and what billing units specifically were
 17 involved in a drug.
 18 Q. It involved --
 19 A. In billing a drug.
 20 Q. -- HCPCS codes?
 21 A. Correct. For drugs.
 22 Q. Would DocuMedix convey information

(Pages 34 to 37)

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1 to customers about reimbursements based on AWP?
 2 A. They might ask questions on an AWP,
 3 for a drug.
 4 Q. Does that mean that DocuMedix might
 5 provide AWP information?
 6 A. I believe so.
 7 Q. To your knowledge, Mr. Akscin, did
 8 DocuMedix ever assist customers with denial of
 9 reimbursement issues?
 10 A. To my knowledge they did not.
 11 Q. So to your knowledge the service
 12 that DocuMedix performed was different than what
 13 ProCert would have performed for BMS customers?
 14 A. To my knowledge.
 15 Q. I forgot to ask you if you had a
 16 primary contact at ProStat.
 17 A. I do. A gentleman by the name of
 18 Phil. The last name is Beard, B-e-a-r-d, as in
 19 dog.
 20 Q. And has that always been your
 21 primary contact there?
 22 A. For the most part.

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1 Q. And was OTN utilizing ProStat
 2 Resources in 1999?
 3 A. I started in December, so prior to
 4 that I couldn't tell you.
 5 Q. From when you started?
 6 A. I believe that BMS had the business
 7 relationship with ProStat at that time.
 8 Q. When did OTN first develop a
 9 relationship?
 10 A. OTN never had a formal relationship
 11 with ProStat.
 12 Q. Okay. Was the relationship between
 13 BMS and ProStat, to your knowledge, any
 14 different than the relationship between OTN and
 15 ProStat?
 16 MR. TRETTER: Objection to the form.
 17 A. I couldn't answer that.
 18 MR. TRETTER: I don't think OTN had
 19 any relationship.
 20 A. We did not have a relationship.
 21 Q. Okay.
 22 A. Not a formal relationship.

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1 Q. Well, you referred customers, so it
 2 was informal?
 3 A. Yes.
 4 Q. I understand that testimony. But
 5 you referenced that BMS might have had a
 6 relationship with ProStat, and I was wondering
 7 if you knew what the nature of that relationship
 8 was.
 9 A. On a formal basis, I do not. I am
 10 aware that there is a relationship.
 11 Q. And do you still refer people to
 12 ProStat?
 13 A. On occasion.
 14 Q. Do you know whether BMS had a
 15 relationship with KRJ?
 16 A. I do not.
 17 Q. Did KRJ provide written materials to
 18 OTN personnel in association with any training
 19 exercises?
 20 A. They may have. I'm uncertain.
 21 Q. Do you know whether KRJ has at any
 22 time provided any reports to OTN with regard to

Page 41

1 the work that KRJ had done with OTN customers?
 2 A. The business relationship between
 3 OTN and -- excuse me -- between KRJ and the
 4 customer was just that, a business relationship.
 5 We were not privy to any outcomes of those
 6 consulting relationships.
 7 Q. Okay. The same question for
 8 ProStat.
 9 A. Mm-hmm.
 10 Q. The same answer?
 11 A. Again, no formal relationship, so
 12 no -- no formal feedback.
 13 Q. Okay. So then ProStat wouldn't
 14 provide to OTN reports regarding any work that
 15 ProStat may have done with OTN customers?
 16 A. That is correct.
 17 Q. What about DocuMedix, did DocuMedix
 18 ever provide any sort of written reports to OTN?
 19 A. From DocuMedix we received on a
 20 monthly basis a roster of customer contacts for
 21 the reimbursement hot line.
 22 Q. Does that mean an inventory of all

11 (Pages 38 to 41)

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1 the contacts that occurred that month?

2 A. Basically it was a running list of

3 calls that they received from customers, the

4 nature of the call and the response to the call.

5 Q. Did DocuMedix bill OTN on a per-call

6 basis?

7 A. Not being privy to the actual

8 contract relationship, I can't answer that

9 specifically. I can tell you that OTN paid for

10 that service.

11 Q. In your opinion did OTN customers

12 value the DocuMedix service that was offered?

13 MR. TRETTER: Objection to the form.

14 BY MR. MATT:

15 Q. Do you understand the question?

16 A. I do.

17 MR. TRETTER: I have no problem if

18 you want to ask did he ever hear from a

19 customer that they thought it was a good

20 service. How does that work?

21 MR. MATT: Let me actually rephrase

22 it differently.

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1 BY MR. MATT:

2 Q. In your experience, based on

3 discussions with OTN clients, did they value the

4 DocuMedix service?

5 A. We've been told at OTN that our

6 customers valued the service that DocuMedix

7 provided.

8 Q. In fact, OTN marketed that service,

9 correct, to its clients and potential clients?

10 A. We did, to the extent of informing

11 our customers that this service was available to

12 them.

13 Q. Do you have any sort of estimate of

14 what percentage of OTN customers have at one

15 time used DocuMedix?

16 A. I would put a very rough estimate at

17 10 percent.

18 Q. In your discussions with OTN

19 customers, did you form an opinion as to whether

20 OTN customers valued the consulting services

21 provided by KRJ?

22 A. It was reported to us by customers

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1 who used KRJ that they valued the services they

2 provided.

3 Q. And do you have any estimate of what

4 percentage of OTN customers used KRJ's services,

5 pursuant to an OTN referral?

6 A. Less than 10 percent.

7 Q. We got onto the topic of consultants

8 because it was part of your responsibilities as

9 director of business development. I want to

10 take you back to other responsibilities you had

11 while you were in that position.

12 I think you said evaluating new

13 technologies was part of your bailiwick?

14 A. Correct.

15 Q. Why don't you flesh out a little

16 more in detail for us, please?

17 A. During the term that I was in that

18 position, I was partially responsible for

19 evaluating specifically two new technologies.

20 One was a program offered by a company called

21 IntrinsiQ, and the program was called

22 Intellidose. And IntrinsiQ is spelled

Page 45

1 I-n-t-r-i-n-s-i-Q.

2 Q. And what did that program do?

3 A. Basically that program was a

4 software program to assist office based

5 oncologists in dose calculation for treatment of

6 their patients. Drug dose calculation in

7 treating their patients.

8 Q. And is that a new technology that

9 OTN adopted?

10 A. We have not.

11 Q. And I think you referenced a second

12 technology. What was that?

13 A. The second technology was an

14 electronic medical record offered by a company

15 at the time known as iKnowMed. I, and then the

16 rest of the company named was K-n-o-w-M-e-d.

17 Q. What was the nature of that program?

18 A. That program was a tiered or a

19 modular approach to the electronic health record

20 or the electronic medical record. At that time

21 there were three — three tiers to the offering,

22 a very, very basically EMR on this end and a

(Pages 42 to 45)

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1 Q. Okay.

2 A. The chain is Pharma to middleman,

3 i.e., specialty distribution, to doctor. And

4 there were a number of provisions in MMA that

5 had the potential for effect on the specialty

6 distribution environment.

7 Q. Excluding your role as a member of

8 SBDA, in your capacity as an OTN employee have

9 you ever had discussions with CMS employees on

10 regulatory issues?

11 A. From time to time.

12 Q. What would be the nature of those

13 discussions?

14 A. Once again, education on the role of

15 specialty distribution, and the supply channel.

16 Q. Did those discussions ever reference

17 reimbursements based on AWP?

18 A. Not to my knowledge.

19 Q. In your role as an OTN employee,

20 have you ever had any discussions with

21 Congressmen or women or their staff related to

22 reimbursements based on AWP?

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1 A. In - yes.

2 Q. Can you describe more specifically

3 the nature of those conversations?

4 A. The conversations predominantly were

5 at a very high level, focusing on the transition

6 under MMA from an AWP-based reimbursement system

7 to the current ASP-based reimbursement system.

8 Q. And what is the current

9 reimbursement formula?

10 A. The current reimbursement system, to

11 my knowledge, under Medicare is drugs

12 administered in the office-based physician

13 environment, or reimbursed at a formula of ASP,

14 average sales price, plus 6 percent.

15 Q. And in the discussions that you just

16 referenced, did you ever take the position that

17 Congress should not change reimbursement from

18 AWP to ASP-based?

19 A. No, we did not.

20 Q. You testified you had conversations

21 with Congressional staff regarding transition

22 from AWP to ASP. Can you be more specific about

Page 56

1 the nature of those discussions?

2 A. Are you asking which specific

3 Congressional staff members, or more as to the

4 content of the discussion?

5 Q. Content.

6 A. Okay. From the content perspective,

7 the discussions focused on how ASP was

8 calculated, okay, as well as the various pricing

9 concessions that are included in that

10 calculation.

11 Q. Have you worked with anyone from BMS

12 on that issue?

13 MR. TRETTER: Objection to the form.

14 BY MR. MATT:

15 Q. Did any BMS employee participate in

16 those discussions?

17 A. No. Not at the SBDA level, they did

18 not.

19 Q. When you were director of business

20 development for OBO, did you have opportunities

21 to speak with OTN clients?

22 A. I did.

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1 Q. How often would you speak with OTN

2 clients?

3 A. My interactions with OTN clients

4 predominantly came on a referral basis.

5 Q. So someone would refer a client to

6 speak specifically to you; is that what you're

7 referring to?

8 A. That is correct.

9 Q. And who would be the person that

10 would refer clients to you?

11 A. Typically it would be one of our

12 salespeople.

13 Q. And can you give examples of general

14 topic matters for which an OTN salesperson would

15 refer a client to you?

16 A. General topic matters would consist

17 of just general business issues and questions,

18 which could include things like staffing

19 patterns, and various benchmarks. At times

20 there were questions that might be specifically

21 related to drug reimbursement.

22 Q. What kind of drug reimbursement

15 (Pages 54 to 57)

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<p>1 questions would you get?</p> <p>2 A. Questions similar to those that were</p> <p>3 handled by our agreement with the folks at</p> <p>4 DocuMedix.</p> <p>5 Q. So, in other words, assistance in</p> <p>6 billing codes?</p> <p>7 A. Coding questions.</p> <p>8 Q. Did you discuss AWP's at all?</p> <p>9 MR. TRETTER: You mean what the</p> <p>10 number might be?</p> <p>11 BY MR. MATT:</p> <p>12 Q. Specifically, yes.</p> <p>13 A. Specifically what the number might</p> <p>14 be?</p> <p>15 Q. Correct.</p> <p>16 A. At times.</p> <p>17 Q. And what would be the source of your</p> <p>18 AWP information?</p> <p>19 A. Publicly available information</p> <p>20 predominantly through Micromedics and Red Book,</p> <p>21 and the folks at First DataBank. Blue Book.</p> <p>22 Q. When you were in your position as</p>	<p>1 MR. TRETTER: Off the record for a</p> <p>2 second.</p> <p>3 (Discussion off the record.)</p> <p>4 BY MR. MATT:</p> <p>5 Q. The communications that you had with</p> <p>6 OTN clients, did you have any practice of</p> <p>7 documenting those conversations?</p> <p>8 A. Occasionally.</p> <p>9 Q. Was there a factor or set of factors</p> <p>10 that would cause you to document a specific</p> <p>11 conversation and choosing not to document them?</p> <p>12 I'm just trying to figure out how you decided</p> <p>13 whether to document one.</p> <p>14 A. Most frequently it was -- the</p> <p>15 documentation was for two reasons: Number one,</p> <p>16 when a referral was made to one of our</p> <p>17 consulting relationships, like KRJ. Okay?</p> <p>18 The second most frequent</p> <p>19 documentation would be on issues where responses</p> <p>20 included sending specific information to the</p> <p>21 customer.</p> <p>22 Q. Your counsel provided me before the</p>
Page 59	Page 61
<p>1 director of business development for OBO, how</p> <p>2 frequently did you speak with OTN clients?</p> <p>3 A. I would say, on average, daily.</p> <p>4 Q. I think your next position you</p> <p>5 testified was director of government relations</p> <p>6 and that you attained that position in</p> <p>7 approximately October of 2002. Correct?</p> <p>8 A. I believe so.</p> <p>9 Q. And what were the nature of your</p> <p>10 responsibilities in that position?</p> <p>11 A. For the most part it was just a</p> <p>12 refocus of much of the work that I had been</p> <p>13 doing since joining the company in 1999,</p> <p>14 removing the responsibility for program</p> <p>15 development and focusing more on the legislative</p> <p>16 and regulatory environment.</p> <p>17 Q. Did you still speak with clients on</p> <p>18 almost a daily basis?</p> <p>19 A. Based on referrals, yes.</p> <p>20 Q. Did they have the same questions</p> <p>21 that they had before?</p> <p>22 A. Nothing changed.</p>	<p>1 deposition started with a group of documents. I</p> <p>2 was wondering if you could go through these and</p> <p>3 pull out any examples you find of documenting</p> <p>4 conversations with clients.</p> <p>5 (The witness complied.)</p> <p>6 MR. TRETTER: I would like to go on</p> <p>7 the record. While the witness is going</p> <p>8 through the documents at the request of</p> <p>9 Mr. Matt, I think it should be made clear</p> <p>10 that these customer communications were</p> <p>11 found in a file entitled AWP Issues, and</p> <p>12 that this doesn't purport to represent</p> <p>13 every communication that the witness ever</p> <p>14 had with customers. We went to the file</p> <p>15 that we thought would be the most pertinent</p> <p>16 to you.</p> <p>17 MR. MATT: Okay.</p> <p>18 BY MR. MATT:</p> <p>19 Q. And how thick was that particular</p> <p>20 file?</p> <p>21 A. Two inches, maybe.</p> <p>22 Q. And you reviewed that file for</p>

(Pages 58 to 61)

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MR. TRETTER: Okay. Maybe you want to mark this one?

MR. MATT: Not yet.

MR. TRETTER: Okay.

MR. MATT: I actually have another one I think I want to do first, I think, that's a little bit older than that one.

BY MR. MATT:

Q. Before we move on to look at a

PowerPoint that I want to go over -- a couple of PowerPoints that I want to go over with you, Mr. Akscin, I want to double back for a second on some earlier testimony.

You testified that you've had many discussions with OBOs, and my question would be who within an OBO office do you typically speak to?

A. That ranges, but typically it's with what's commonly known in the industry the practice manager or the practice administrator, as well as from time to time with the, for lack of a better term, the chief medical officer.

Akscin is the name on the first page.

And the Bates numbers are

BMS/AWP/000096632 to 6643.

After you've had an opportunity to review this, let me know when you're ready for some questions.

THE WITNESS: (Reviewing document.)

BY MR. MATT:

Q. Are you ready?

A. I am.

Q. First of all, did you prepare this based on your experience in researching to the concerns of OBOs?

A. It appears to be one of my presentations.

Q. Was it maintained in your files or on your computer in the course of your responsibilities with OTN?

A. Most likely, yes.

Q. And when you made this presentation, did you strive to be as accurate as possible?

A. I did.

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The head doctor, so to speak.

Q. And does the practice administrator handle the business side?

A. The practice administrator focuses on the business side.

MR. MATT: Okay. I want to introduce another exhibit, a PowerPoint, that I would imagine you probably recognize. That's actually for your lawyer, Mr. Tretter, and then I'll have the court reporter mark this as Exhibit Akscin 002. (Exhibit Akscin 002, document headed Reimbursement in Office Based Oncology, Sales Meeting, July 11, 2000, Bates numbered BMS/AWP/000096632 to 642, was marked for identification.)

BY MR. MATT:

Q. Why don't you go ahead and take a moment to review what the court reporter has marked as Exhibit Akscin 002, which for the record is a PowerPoint titled Reimbursement in Office Based Oncology, Sales Meeting July 11, 2000. John

Q. So on page 6636, in the middle slide there it says "Top Three OBO Concerns"?

A. Correct.

Q. So when you wrote this, you accurately presented the top three OBO concerns as "Reimbursement, Today; Reimbursement, Tomorrow; Reimbursement!" Correct?

MR. TRETTER: Objection to the form.

A. The point of that specific slide, "Top Three OBO Concerns," with "Reimbursement, Today," "Reimbursement, Tomorrow," and "Reimbursement" is a boil-down, if you will, of what office based oncology customers were telling OTN at that time.

Q. Okay.

A. It's not OTN's concern. It's what our customers have told us is their concern.

Q. Correct. Thank you for clarifying that.

And who attended this sales meeting?

A. This was a sales meeting that was attended for the most part -- it was a midyear

23 (Pages 86 to 89)

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1 sales meeting, going back five years, to July of
2 2000. Typically those sales meetings were
3 attended by OTN outside sales, OTN inside sales,
4 and some representatives of the OTN marketing
5 group.

6 Q. Approximately how many people would
7 be at a meeting of that size?

8 A. Sixty to seventy.

9 Q. And do you have a recollection of
10 how many times you made this presentation?

11 A. This specific presentation was made
12 once or twice to the company, to the sales group
13 as a whole.

14 Q. Was it ever made to BMS sales
15 representatives?

16 A. I believe that I may have made a
17 similar presentation to BMS sales meetings. Not
18 on a national basis, but more on a district
19 basis.

20 Q. And would you have maintained copies
21 of all the PowerPoints you used in your
22 meetings?

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1 A. For the most part. I have, again,
2 to my knowledge on my laptop I do have copies of
3 most of the presentations I've made.

4 Q. And you usually keep those on your
5 laptop as opposed to paper copies?

6 A. That is correct.

7 Q. Could you please reference page
8 6634. The middle slide references "OBO
9 Revenue"?

10 A. Mm-hmm.

11 Q. And the bullet point says "Highly
12 Medicare Driven" and one of the four dashes
13 under that bullet point says "Drugs - AWP."

14 Is this a reference to AWP as a
15 revenue source?

16 A. The intent of the slide is to point
17 out a couple of things. Number one, the slide
18 indicates that as is publicly available
19 knowledge, office based oncology is --
20 represents approximately 50 to 55 percent
21 Medicare population. So that is the implication
22 of being highly Medicare driven. Again, 50 to

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1 55 percent of office based oncology treats
2 Medicare patients. Nationally, very broad
3 scope. Again, publicly available information.

4 The further bullet points below that
5 are intended to point out that there are
6 specifically -- there are specific services and
7 supply items that the Medicare system reimburses
8 for, and more specifically points out the
9 reimbursement system at that time, being July of
10 2000, as to the benchmark process that was used
11 for reimbursement.

12 Q. And that's the reference to AWP?

13 A. And that is the reference
14 specifically on drugs, the benchmark for
15 reimbursement at that time was AWP.

16 Q. Okay. And then below that there's a
17 slide titled "Gross Revenue Mix"?

18 A. Mm-hmm.

19 Q. Is that 64 percent?

20 MR. TRETTER: You have to say yes or
21 no.

22 A. I'm sorry. Yes.

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1 Q. And is that 64 percent of revenues
2 at the time to OBOs came in the form of
3 reimbursement for drugs. Is that correct?

4 A. That is correct. And again that was
5 based on nationally-published data by a number
6 of different resources.

7 Q. Has that generally been your
8 experience since you've been an OTN employee?

9 A. It was my experience as a practice
10 administrator, and up until 2005 it's
11 predominantly been the experience as reported by
12 office based oncology customers.

13 Q. Could you please turn to page 6638.
14 There are three slides here. The middle one
15 says "Average Wholesale Price"?

16 A. Yes.

17 Q. And there's a bullet that says, "AWP
18 does not represent actual acquisition cost" and
19 then there's a dash, and it says "20 to 25
20 percent differential for sole source products."

21 When you use the word
22 "differential," does that refer to the

(Pages 90 to 93)

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1 difference between AWP and actual acquisition
2 cost?
3 A. At that time that's what that
4 referred to.
5 Q. And are those differences
6 exemplified on the following page, 6639, in the
7 top slide that says "Drug Reimbursement Today"?
8 A. The point of that slide, top slide
9 on page 6639 --
10 Q. Yes.
11 A. -- is to indicate a number of drugs,
12 as an example of many drugs whereby there is a
13 differentiation.
14 Q. Okay. And the difference in this
15 slide specifically is between Medicare
16 reimbursement, which is a column, and estimated
17 acquisition cost, which is another column,
18 correct?
19 A. That is correct.
20 Q. And if you recall, what is the
21 source of the information in the estimated
22 acquisition column?

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1 A. The source of the information on
2 estimated acquisition cost at that time was, to
3 my knowledge, predominantly OTN's pricing for
4 the drug.
5 Q. The next slide on that same page
6 says "What is happening?"
7 Does this refer to the change we
8 were discussing earlier in which HCFA was
9 proposing to change the AWP's for fifty products?
10 A. It does.
11 Q. The last dash there says, "FDB to
12 collect information from wholesalers - OTN is
13 listed first."
14 Could you be more specific about
15 what that refers to?
16 A. In support of some of the
17 information that was collected by government
18 resources, First DataBank, which is again one of
19 those resources that report AWP information, was
20 to survey certain wholesalers to obtain
21 additional information regarding pricing as it
22 relates to AWP.

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1 Q. And did First DataBank in fact
2 survey OTN on these fifty drugs?
3 A. I am not aware of whether they did
4 or not.
5 Q. In the course of your
6 responsibilities at any time as an OTN employee,
7 did you have communications directly with First
8 DataBank personnel?
9 A. I have not.
10 MR. MATT: I think that's all the
11 questions I have on that one. Thank you.
12 Mark this as the next exhibit,
13 please.
14 (Exhibit Akscin 003, document
15 entitled "Update on AWP," Bates numbered
16 BMS/AWP/000097165 to 171, was marked for
17 identification.)
18 BY MR. MATT:
19 Q. The court reporter has handed to you
20 Exhibit Akscin 003 to your deposition, Mr. Akscin,
21 which relates to an Update on AWP PowerPoint.
22 The Bates numbers, for the record, are

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1 BMS/AWP/000097165 through 71. Take an
2 opportunity -- or actually, after you've had an
3 opportunity to review that, let me know and I'll
4 ask you a few questions.
5 (Witness reviews documents.)
6 BY MR. MATT:
7 Q. The court reporter -- I'm sorry.
8 Exhibit Akscin 003 that's before you, Mr. Akscin,
9 looks like an e-mail Mr. Brodowy sent to you.
10 Correct?
11 A. It appears so.
12 Q. And I noticed that some of these
13 slides look pretty similar to some of the slides
14 we just saw in Exhibit Akscin 002.
15 A. Correct.
16 Q. My question is: Does Mr. Brodowy
17 give presentations?
18 A. From time to time I understand he
19 did at meetings that I did not attend.
20 Q. And was it your practice to assist
21 him in preparing slides for those presentations
22 from time to time?

25 (Pages 94 to 97)

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1 may be interfaced to pass data collected through
2 the Lynx process to the practice's PMS system to
3 simplify -- simplify the billing process and
4 claims filing process.

5 Q. Is Lynx predominantly a product
6 ordering/inventory management type software?

7 A. It is an inventory management or
8 pharmacy management system, correct.

9 Q. The next bullet is "Documedics." We
10 discussed that earlier in your testimony?

11 A. Yes.

12 Q. The next bullet is KRJ. We've also
13 discussed that.

14 A. Correct.

15 Q. The next bullet is "Lynx2otn.com."
16 Can you describe that, could you describe the
17 Lynx2otn.com site generally for us?

18 A. WWW.Lynx2otn.com is a customer
19 website maintained by OTN with the purpose of
20 providing information to our customer on issues
21 important in the office based oncology
22 environment.

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1 It also has a component for ordering
2 drugs on line, similar to an Amazon.com type of
3 component. Okay?

4 Q. Are you familiar with a report that
5 used to be called the AWP Price Report?

6 A. A report somewhat similar to that,
7 yes.

8 Q. And that was something that a
9 customer could view by accessing the Lynx2otn
10 website, correct?

11 A. That is correct.

12 Q. And that report is no longer used,
13 right?

14 A. That report, as it was known at that
15 time, is no longer used.

16 Q. And when I call it the AWP Price
17 Report, is that the title you're familiar with?

18 A. For the most part, correct.

19 Q. Okay. And did that report present
20 AWP reimbursement information in one column and
21 acquisition cost in another?

22 A. To my knowledge, without having a

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1 report in front of me, on a high level we
2 reported in that report for the drugs purchased
3 by the practice, okay, information regarding
4 AWP, which was updated on a monthly basis for
5 the most part, and information based on the
6 pricing that that customer received for the
7 drugs that they purchased.

8 Q. And in your conversations over time
9 with OTN customers, did they indicate to you
10 that they found that report useful?

11 A. The entire intent of the report was
12 to assemble data that was available in the
13 public sector, available through Micromedics Red
14 Book, and to condense that data for the drugs
15 most frequently used by oncology practices, the
16 practices found that to be very valuable,
17 because if you've ever seen a Red Book, it's
18 like the Manhattan yellow pages.

19 Q. I have seen it, and I agree.

20 I have one more question: On page
21 826 is a slide relating to "Managed Care
22 Contracting."

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1 A. Mm-hmm.

2 Q. The third bullet says "Access Med:
3 Legal Review."

4 A. Okay.

5 Q. What does that refer to?

6 A. Access Med -- excuse me, I want to
7 look at the date on this. This is '03, correct?
8 Yes, January of '03.

9 Access Med, at that time, okay, is
10 a division of ProStat Resources. We talked
11 about ProStat Resources earlier in my testimony.
12 Okay?

13 At that time Access Med, based on
14 referral, would review a managed care contract
15 of a customer, if the customer wanted that
16 service. It was a business transaction between
17 the customer and Access Med, and that was it.
18 OTN was not associated with that relationship.
19 We had no contractual relationship formally with
20 Access Med, again, a division of ProStat
21 Resources.

22 Q. Would Access Med review those

29 (Pages 110 to 113)

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1 Bates number on the bottom of the document for
2 purposes of identification, it would be helpful.

3 A. Specifically pages 904 and 905.

4 Q. And the exhibits beginning on page
5 908, are these kind of form marketing materials?
6 And what I mean by that question is, are these,
7 you know, pre-printed marketing materials that
8 are distributed to clients or potential clients
9 as opposed to being something specifically
10 prepared for this proposal?

11 MR. TRETTER: Were these actually
12 used at the time?

13 MR. MATT: Yeah.

14 A. These, specifically page 909, 910,
15 874 and 912 --

16 MR. TRETTER: 874?

17 A. I'm sorry. 911 -- I looked at the
18 wrong number, I'm sorry.

19 To repeat, specifically pages 909,
20 910, 911 and 912 are for the most part, based on
21 my recognition of the documents, mass produced,
22 commonly used marketing materials.

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1 Q. Okay. Thanks. I have one other
2 question on this one.

3 On page 909 there's a bullet point
4 that references "Payer reimbursement
5 methodologies and allowables."

6 A. Mm-hmm.

7 Q. I was wondering if you could be more
8 specific about what is referenced there.

9 A. That normally will be referencing
10 various payer resources, not just Medicare, but
11 other managed care and private insurance, as to
12 first of all which methodology might be used.
13 There are various methodologies that are used in
14 healthcare on which to base payments for drugs,
15 as well as services.

16 And then the allowables portion of
17 it would be the actual numbers associated with
18 this. And again, this was a service under this
19 side that was provided by DocuMedix.

20 Q. Thank you.

21 MR. MATT: Mark this as the next
22 exhibit.

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1 (Exhibit Akscin 007, document
2 entitled The Network News, January/February
3 1997, Bates numbered BMS/AWP/000095588 to
4 611, was marked for identification.)

5 Q. The court reporter has marked as
6 Exhibit Akscin 007 to your deposition a
7 January/February 1997 issue of The Network News. It's
8 numbered 000095588 to 611.

9 Are you familiar with The Network
10 News?

11 A. I am.

12 Q. How often did OTN publish this?

13 A. Not being with OTN back in 1997, I'm
14 unsure of that.

15 Q. What about during the time you were
16 with OTN?

17 A. We strove to produce this document
18 somewhere between bimonthly and quarterly.

19 Q. And does OTN still produce The
20 Network News?

21 A. Most recently we began producing
22 Network News again.

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1 Q. So there was a time frame during
2 which it wasn't produced?

3 A. That is correct.

4 Q. And what's the approximate dates, if
5 you recall?

6 A. Very little production in 2003 and
7 early 2004. I think we resurfaced this
8 communication tool to our customer base sometime
9 late 2004.

10 Q. Is there a particular reason why
11 production slowed or decreased in 2003/2004?

12 A. My understanding was it had to do
13 with marketing resources at the time.

14 Q. If you could please turn to the page
15 that has the Bates number 604. There's AWP and
16 HCPCS information presented here, correct?

17 A. That appears to be.

18 Q. To your recollection was this
19 information included in every issue of The
20 Network News while you worked at OTN?

21 A. In Network News issues published
22 during my tenure at OTN beginning in December of

(Pages 122 to 125)

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